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LEGISLATION ON THE SACRAMENTS

IN THE NEW CODE OF CANON LAW

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BY

VERY REV. H. A. AYRINHAC, S.S., D.D., D.C.L.

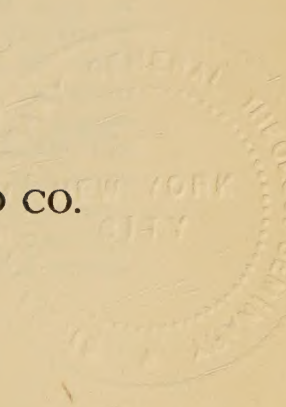
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LEGISLATION ON THE SACRAMENTS
IN THE NEW CODE OF CANON LAW

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INTRODUCTION

THE legislation on the Sacraments in the new Code forms the first part of the third book, *De Rebus*, which under the generic term "Things" includes also Sacred Places and Times, Divine Worship, Ecclesiastical Magisterium, Ecclesiastical Benefices, Church Property. (Can. 726-1551.)

The Sacraments occupy the first place among Ecclesiastical Things, as the chief and divinely instituted means of grace in the Church.

Because of their divine origin, canonical law cannot affect them in their substance or essential elements, but it determines conditions for their lawful and at times, at least indirectly, for their valid administration and reception. Leaving to theology all dogmatic and purely moral questions, it lays down rules of an eminently practical character.

The interpretation of these rules offers usually no special difficulty. This commentary aims at stating them as clearly as possible, explaining them whenever necessary and pointing out their main applications after showing the principal changes the discipline has undergone in the course of centuries, principally those introduced by the Code. Moralists deal with them also and have embodied them in their treatises *De Sacramentis*, but the study of them in the light of canonical principles and from a strictly canonical stand-

point contributes not a little to a fuller realization of their bearing.

A previous volume having been devoted to the Sacrament of Matrimony, the present one will treat of the other six Sacraments. (Can. 731-1153.)

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LEGISLATION
ON THE SACRAMENTS
IN THE
NEW CODE OF CANON LAW

LEGISLATION ON THE SACRAMENTS

IN THE NEW CODE OF CANON LAW

PRELIMINARY NOTIONS

(Can. 726-730)

1. The third book opens with a few introductory canons which define its object, ecclesiastical things, and contain some general enactments regarding a disorder liable to occur in the use of them, *viz.* simony.

I. NATURE AND SPECIES OF ECCLESIASTICAL THINGS (Can. 726)

By *things* canonists understand here external objects distinct from persons and falling under the senses at least in some indirect manner.

External objects do not all, however, come under the authority of the Church and canonical legislation, but only those which the Church uses as means to the end for which she was established, on the principle that when assigning that end to her Our Lord gave her the strict right to take the means necessary for its attainment.

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These objects or means are spiritual, temporal, or mixed: spiritual, either in themselves, like indulgences, the ecclesiastical *magisterium*; or as causes of grace, like the sacraments; or as instruments of sanctification, like the sacramentals, divine worship, images; temporal, such as property needed by the Church for the support of her ministers, institutions, etc.; mixed, temporal in themselves but connected with spiritual things, for example, by a blessing, like sacred edifices and cemeteries, or by mutual dependence, like benefices in relation to ecclesiastical offices.

II. SIMONY (Can. 727-730)

(Reiffenstuel, Lib. V, Tit. 3; Wernz, Jus Decretalium, Vol. vi, n. 338; Thomassin, Ancienne et Nouvelle Discipline de l'Eglise, P. III, L. 1, C. 49; N. A. Weber, A History of Simony in the Christian Church, Baltimore, 1909; Vermeersch, Epitome Juris Canonici, T. II, n. 4; Ferreres, Institutiones Canonicae, vol. ii, n. 9; A. Blat, Commentarium Textus Juris Canonici, Lib. III, De Rebus, p. 2.)

2. 1. *Nature.* Referring to Simon Magus, who had attempted to buy the power of imparting the Holy Ghost by the laying on of hands (Acts viii, 18-24), ecclesiastical writers, particularly since St. Gregory the Great, have often qualified as simoniacal the sale or exchange of spiritual things for temporal advantages and afterwards given the name of simony to this disorder. The Code, after St. Thomas (2^a 2^{ae}, q. 100, a. 1), defines it as the deliberate will of buying or selling something spiritual in itself or annexed to spirituals for a temporal price.

(a) For the sin of simony an internal intention suffices, but the ecclesiastical offence supposes some mutual agreement or pact externally mani-

fested. There is no canonical crime of simony if the simoniacal intention exists only on one side.

(*b*) In connection with simony, the words buying, selling, or exchanging and other such terms must be understood in a broad sense as including any onerous stipulation or contract imposing a real obligation, even though not carried into effect and made only implicitly, provided circumstances reveal the simoniacal intention with sufficient clearness. There is no simony in conferring a temporal favor on a person with the mere hope of receiving some spiritual benefit as an expression of gratitude, nor in making a donation to secure the benefit of certain prayers, as in the case of foundations; one is not meant as the price for the other.

(*c*) The temporal price which canonists since Gratian call *munus* may consist in anything of pecuniary value: money, movable or immovable property, remission of debts; protection, commendation, praise; services, help.

(*d*) Simony is committed whether the contract or transaction has for its object something intrinsically spiritual like the sacraments, ecclesiastical jurisdiction, consecration, indulgences, absolution, dispensations, blessings, sacramentals, preaching (not teaching in school even sacred sciences), appointment to ecclesiastical offices, etc.; or something temporal in itself but connected with a spiritual element in such a way that one necessarily supposes the other, for example, benefice and office, or that the spiritual element although separable from the temporal one becomes partially object of the compact, as when one sells chalices, medals, rosaries, holy pictures, etc., and

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demands a higher price because of their consecration or blessing.

3. 2. *Kinds.* Simony as just defined is contrary to the divine right, because of the irreverence to sacred things it implies, assimilating or comparing them to temporal objects.

To exchange temporal objects annexed to spiritual ones for other temporal objects similarly annexed to spiritual; or spiritual things for other spiritual things and temporal things in the same manner, v.g. a chalice for a ciborium, a novena for a Mass, one piece of ecclesiastical property for another, does not imply irreverence nor assimilation of spiritual to temporal things, but it might lead to this in some cases. Because of this danger the Church forbids some of these transactions, which thus become simoniacal by ecclesiastical law, for example, exchanging benefices (Can. 486-488), hence the simony of ecclesiastical, as distinct from divine, right.

3. *Applications.* 1°. It is no simony to give a temporal thing, not in exchange for a spiritual one, but on the occasion thereof and for a reason approved by law or legitimate custom: for example, as contribution towards the support of the Church, of a religious institution or of the clergy, under the form of Mass stipends, taxes, or fees for funerals, for various ministrations or acts of voluntary jurisdiction within the limits prescribed by law (Can. 736, 1234, 1235); as an expression of gratitude for favors received, or an encouragement to virtue, or an act of charity, etc.

2°. On the same principle one who would redeem relics to save them from profanation or offer a sum of money to remove unjust opposition

to one's election to an ecclesiastical office would not commit simony. But it would be simony, at least of the ecclesiastical law, to take a stipend when the law forbids it, for example, for a second Mass, and probably also to exact more than the fixed fee. Some see only injustice in this case and simony in the other. (Vermeersch, n. 10.)

3°. To exchange a temporal object which has a spiritual benefit attached to it for a purely temporal one does not involve simony provided the spiritual element does not form part of the contract; for example, selling consecrated chalices or blessed rosaries for their real material value without any regard to the consecration or blessing. These objects, however, lose the indulgences with which they may be enriched. (Can. 924.)

4. 4. *Sanctions.* 1°. All persons, even Bishops, who commit simony in the administration or reception of Orders or of the other sacraments become suspected of heresy and, if clerics, incur a suspension reserved to the Holy See. (Can. 2371.) If guilty of simony in connection with ecclesiastical offices, benefices, or dignities they (a) incur *ipso facto* an excommunication reserved to the Holy See in a simple manner; (b) they lose permanently whatever right of election, presentation, or nomination they may possess; (c) when clerics they are liable to suspension. (Can. 2392.)

2°. Moreover, simony invalidates any contract tainted by it and if committed in connection with benefices, offices, or dignities it renders subsequent provision null and void even if the appointee had no share in and no knowledge of the simoniacal compact, unless the guilty party had acted thus

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for the purpose of defrauding him and against his protest.

Hence (*a*), even before any judicial sentence the object given or received simoniacally must be returned if restoration is possible and would not involve irreverence to a spiritual thing, and the benefice, office, or dignity obtained through simony must be surrendered. Orders once received can not be given back and respect for sacred relics would not permit the return of them to a scoffer from whom they had been bought.

(*b*) One who obtains a benefice through simony does not acquire any right to the fruits thereof and consequently should return them all. If however, the person has come in possession of them in good faith, the judge or Ordinary has authority to let him keep them totally or in part.

PART I

ON SACRAMENTS

(Wernz, *Jus Decretalium*, T. III, n. 720; Cappello, *Tractatus Canonico-Moralis De Sacramentis juxta Codicem Juris Canonici*; Marietti, Torino, 1921; Blat, o. c., p. 12; Vermeersch, o. c., n. 14; Augustine, *A Commentary on Canon Law*, vol. iii; Prümmer, *Manuale Juris Ecclesiastici*, q. 277.)

GENERAL RULES (Can. 731-736.)

In a special treatise on sacraments in general, theologians explain the nature of sacraments, which they define as sensible signs instituted by Christ to produce grace. They prove the divine institution of the seven sacraments of the New Law and their efficacy to produce *ex opere operato* first or second grace. They show how every one of them consists of two essential elements called matter and form; finally, they examine the conditions for their lawful and valid administration and reception.

The Code does not deal with these questions, which belong to dogmatic or moral theology, but before speaking of the particular sacraments it lays down some general rules regarding the respect due to them, the exclusive right of the faithful to receive them, the iteration of those which imprint a character, the observance of the proper

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rite and of the ceremonies prescribed, the holy oils used in their administration, their gratuitous dispensation.

5. 1. *Respect due to Sacraments.* The legislator, recalling the institution of all the sacraments of the New Law by Christ Himself as the chief means of sanctification and salvation, recommends the greatest discretion and care in their administration as well as diligence and reverence in their reception.

2. *Exclusive Right of the Faithful to the Sacraments.* Ecclesiastical law forbids the administering of the sacraments to heretics and schismatics, even to such as may err in good faith and ask for the sacraments, unless they first abjure their errors and become reconciled with the Church. They may possibly possess the requisite internal dispositions, but as long as they do not belong to the body of the Church they should not enjoy the privileges of membership.

This rule represents the quasi-official attitude of the Church, principally in *foro externo*, towards outsiders and applies strictly to such among them as have the full use of their powers and senses. In favor of those who are in danger of death, particularly if destitute of their senses, she authorizes a somewhat different course. (Reuter, *Neo-Confessarius*, 3^a Ed., n. 203, 218; *Ecclesiastical Review*, Nov. 1922, p. 450). Good moralists, relying on decisions of Roman Congregations (Holy Office, July 20, 1898; May 26, 1916), permit the administration, at least *sub conditione*, of the sacraments of penance and extreme unction to heretics or schismatics in danger of death and unconscious, and even to those who

still retain the use of their senses provided there be some probable sign of their present good dispositions, which a prudent exhortation may also produce in them without disturbing their good faith. (Cappello, l. c., n. 73; Reuter, l. c.; Noldin, *Theologia Moralis*, III, n. 295; Lehmkuhl, II, n. 650.)

6. 3. *Repetition of the Sacraments of Baptism, Confirmation, and Orders.* As these sacraments imprint a character in the soul, they must not be repeated. Should a prudent doubt exist as to the fact of their administration or their validity they ought to be administered again conditionally.

The law speaks here of prudent doubt based on some probable evidence at least extrinsic if not intrinsic. A mere suspicion or scruple would not suffice. Authors, however, permit the repetition of a sacrament necessary for the subject or for the good of others, like baptism or Holy Orders, simply to quiet prolonged mental anxieties or through regard for the opinion of a few theologians, although devoid of serious probability. (Cappello, n. 27; Vermeersch, n. 17; Lehmkuhl, n. 26.)

Still, even in the case of baptism, the Church regularly requires a reasonable doubt for permitting its repetition. Congregations have declared on several occasions that the sacrament is not seriously doubtful from the mere fact that a nurse or doctor administered it in case of necessity. Nor do they approve of indiscriminate rebaptizing of converts from heresy or schism, but they demand an investigation in each particular case. It should be examined what matter and

form are used in the sect to which the convert belonged and also whether the minister conformed to the laws of his Church. As to his intention it is enough that he should at least implicitly mean to do what the Church does or what Christ had in view when he instituted the rite of baptism, whatever may be his personal views on the nature or efficacy of the sacrament.

If the investigation proves impossible or unsatisfactory, baptism should be repeated conditionally. Lehmkuhl is of opinion that in some countries, particularly in America, every baptism administered by a non-Catholic ought to be repeated conditionally unless a reliable witness can testify that it was conferred in the proper manner. The carelessness prevailing among Protestants in this matter creates an *a priori* presumption against the validity of their ritual acts. (Theologia Moralis, II, n. 25.)

7. 4. *Rites to be Observed.* In the celebration, administration, and reception of the sacraments the rites and ceremonies prescribed in the liturgical books approved by the Church should be faithfully observed.

Some of these rites belong to the substance of the sacrament and their omission would constitute a grave irreverence. The accidental rites and the ceremonies prescribed by the Church bind *sub gravi* or *sub levi* according to the gravity of the matter. Some are only of counsel.

Each person must, moreover, follow his own rite, Latin, Greek, Syrian, etc., as the case may be. The faithful may, however, for the satisfaction of their devotion receive the Holy Euchar-

ist in any rite (Can. 866), and in cases of necessity Oriental priests may consecrate in unleavened and Latin priests in leavened bread. (Can. 851.)

5. *The Holy Oils.* (Can. 734). 1°. According to an ancient custom, which soon obtained force of law, the *Oleum Catechumeorum*, *Oleum Infirmorum*, and *Sanctum Chrisma* must be renewed every year, and only the oil blessed by the Bishop on the preceding Maundy Thursday should be used during the year, except in cases of necessity, for the administration of the sacraments of baptism, confirmation, extreme unction, or orders. This necessity would exist if the reception of a sacrament could not be put off without notable inconvenience.

If the holy oils required for the blessing of the baptismal water on Holy Saturday have not come in due time, the old ones should be used and the water thus blessed may serve till the vigil of the following Pentecost. (Vermeersch, n. 19.)

2°. Should the supply of holy oils threaten to give out, unblessed olive oil may be added, only in smaller quantity; this may be repeated whenever needed.

3°. Each pastor must apply to his Ordinary for the holy oils, according also to an ancient custom and as a token of subjection.

He ought to keep them in church, which probably includes the sacristy, in a safe and decent place, not in the tabernacle, under lock and key.

He should not keep them in the rectory except in cases of necessity, as if he expected a sick-call during the night and the church was at a great

distance, or for some other reasonable cause and with the Ordinary's permission.

8. 6. *Gratuitous Dispensation of the Sacraments.* (Can. 736.) The Council of Elvira forbade the faithful to offer money to the minister on the occasion of their baptism, lest he should appear to sell what he received freely. (300, Can. 48.) Other Synods enacted similar decrees regarding the Holy Eucharist, penance, extreme unction, etc. Generally, however, they permitted the acceptance of offerings spontaneously made but not the demand or exaction of them.

Innocent III, in the Council of Lateran (1215, Can. 4), condemned again unlawful exactions, but at the same time he asked Bishops to maintain laudable customs and compel laymen, if necessary, to respect them, *i. e.* to make the usual offerings to the ministers of the sacraments. Thus these oblations had indirectly become obligatory.

The law has remained substantially the same to the present day. Making or even demanding some offering on the occasion of the reception of sacraments, not as the price of the sacrament nor of the labor entailed in its administration, but as a contribution to the support of the clergy, is in itself legitimate. But as the practice, particularly in connection with some of the sacraments, *v. g.* penance, might present serious inconveniences and give rise to abuses or misunderstandings, the Church does not allow it indiscriminately, and even when she allows it she fixes the amount of the offering which may be demanded.

On principle, then, the sacraments are free; the minister must not under any pretext, directly or

indirectly, demand or exact anything for their administration except only those oblations or fees that have the approval of the legitimate authority. (Can. 1507.)

TITLE I

BAPTISM

(Can. 737-779.)

(Wernz, III, n. 727; Blat, o. c., p. 20; Vermeersch, o. c., n. 21; Cappello, o. c., n. 123; Dictionnaire de Théologie, Baptême; Catholic Encyclopedia, Baptism; L. Labauche, S.S., *The Three Sacraments of Initiation*, Blase Benziger, New York, 1922; Tanquerey, S.S., *Synopsis Theologiæ Dogmaticæ*, 1921, T. III, n. 382; Noldin, *De Sacramentis*, n. 54.)

THEOLOGICAL PRINCIPLES (Can. 737.)

9. The Code sums up in an introductory canon the Catholic doctrine on baptism: its necessity, essential elements, and divisions.

1. *Necessity.* Baptism, which the Catechism of the Council of Trent defines as the sacrament of regeneration by water in the word, is called here the gate to the other sacraments, the foundation presupposed by them all for their valid reception, a necessary means of salvation.

Perfect contrition with the desire of baptism it implies or martyrdom endured for Christ may, in some measure, serve as substitutes for the sacrament and suffice for justification, but they do not imprint on the soul the character of Christian. By them a person does not become a member of the Church nor subject to her laws, and he re-

mains incapable of receiving the other sacraments. The Church does not, however, exclude catechumens from all share in her prayers (2, 3, X, III, 43; Gasparri, *De SS. Eucharistia*, n. 487), nor always from the privilege of Christian burial. (Con. Vien., 1858, Coll. Lac., V, Col., 190.)

10. 2. *Essential Elements.* The valid administration of baptism requires ablution with true, natural water and the pronouncing of the prescribed words. This indicates what scholastics have called the remote and proximate matter and the form of the sacrament.

1°. The remote matter is what men commonly consider as water, whether taken from a river, a spring, or a cistern; or collected from mists, fogs, or dews; or condensed from vapors or steam; sea-water, rain-water, mineral water, pure or mixed with other ingredients, provided in common estimation it retains the nature and properties of true, natural water.

2°. The proximate matter or ablution must express the action of washing or purifying; for this the water must flow and touch the person baptized, not simply his clothes or even his hair, but the skin itself, otherwise the sacrament would remain at least doubtful.

3°. The same person who performs the ablution must pronounce at the same time, morally speaking, the words of the form: "I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost," without any change which would modify the sense. The Holy Office declared invalid a baptism administered with these words: *Ego volo ministrare tibi sacramentum baptismi peccatorum in nomine*, etc. (June 23,

1840.) Theologians consider as insufficient forms such as these: I anoint thee, etc., I baptize in the name, etc., I baptize thee in the name of Christ. Mere slips of the tongue or grammatical mistakes due to ignorance do not vitiate the form. The same Congregation declared it unnecessary to repeat even conditionally a baptism in which the form had been pronounced thus: *En te baptismo en nome do padre e do Filio e do Spirito Sancto* (May 13, 1817), and again: *Ego te baptigo in nomine Patri et Firii et Firitui Sancti*. (Aug. 3, 1889.)

3. *Division*. Baptism is divided into solemn and private. In the former all the ceremonies prescribed by the Ritual are observed; in the latter only the essential rite.

CHAPTER I

THE MINISTER OF BAPTISM

(Can. 738-744.)

11. 1. *Early Practice*. In the New Testament we see baptism administered by the Apostles (Acts, xvii, 33; I Cor., i, 14-16), more commonly by their assistants (Acts, x, 48), by the deacons (Acts, viii), and apparently also by lay persons. (Acts, ix.)

As early as the second century the distinction appears between the solemn and the private administration of baptism, the former reserved to the Bishop or in his presence to the priest assisted by deacons, the latter permitted not only to all

clerics but also to the simple faithful in cases of necessity. Some questioned the validity of baptism conferred by laymen; St. Basil, Bishop of Cæsarea, pronounced it null (Epist., 188) and St. Gregory of Nazianzen seems to have shared his view, but this represents only private opinions, soon abandoned by all.

The question of the validity of baptism administered by heretics gave rise to more serious controversies. At last the teaching of the Roman Church prevailed and the value of the sacrament was not made to depend on the faith or sanctity of the minister.

Whether pagans themselves can baptize validly did not appear quite clear to St. Augustine and some of his contemporaries. Pope Nicholas I explicitly affirmed in his letters to the Bulgarians (866) that they can and the Council of Lateran (1215) officially confirmed his teaching.

12. 2. Ordinary Minister of Solemn Baptism. (Can. 738-740.) 1°. Regularly the minister of solemn baptism should be a Bishop or priest not deprived of the use of his power of Order by suspension or interdict. (Prop. Fide, Jan. 21, 1789; Coll., n. 598.)

2°. He must also possess jurisdiction, as ecclesiastical law reserves the conferring of baptism to the pastor or Ordinary or to priests authorized by him, which authorization may always be presumed in cases of necessity. Hence:

(a) A pastor or Ordinary may baptize all who have their domicile or quasi-domicile in his territory; also the *vagi*, or persons who having no domicile or quasi-domicile in any diocese or particular parish, come under the authority of

the pastor in whose parish they actually reside.

(*b*) He should not baptize the strangers, *peregrini*, who belong to another parish even though they happen temporarily to reside in his. These should go to the pastor or Ordinary of the place in which they have their domicile or quasi-domicile, provided they can do so easily and without causing delay. If they can not, any pastor would have the right to give them solemn baptism in his own parish. This principle applies also to children born outside of the parish or diocese of their parents. They should be brought to the pastor or Ordinary of the parents whenever convenient. Some diocesan statutes determine the distance which would excuse from this rule, but much depends on circumstances, facility of communication, weather conditions, etc.

The Second Plenary Council of Baltimore (N. 227) condemns as a very serious abuse the practice of priests who accept for baptism children belonging to another parish and who could easily be brought to their pastor.

(*c*) Where the division into parishes or quasi-parishes does not exist, particular statutes or legitimate customs will determine who has authority, besides the Ordinary, to administer solemn baptism in a given district.

Pastors of national churches may baptize those who belong to their congregation by reason of their language or nationality.

(*d*) No one should, without permission, administer solemn baptism outside of his own territory, even to his own subjects.

13. 3. *Extraordinary Minister of Solemn Baptism.* (Can. 741.) 1°. Deacons receive in their

ordination the power of administering baptism, but ecclesiastical law forbids them to use it without permission from the Ordinary or the pastor. To grant this permission a just, not necessarily a grave, cause is required and suffices, *v. g.* the absence or sickness of the pastor, his other urgent occupations, confessions to hear, numerous baptisms to administer, etc.

In cases of necessity a deacon may presume this permission; necessity implies more than a just cause.

2°. When baptizing, a deacon uses all the ceremonies of the Ritual but does not bless the salt or water. (S. R. C. Feb. 10, 1888.) Should he thus administer baptism without the necessary permission he would not incur an irregularity (Can. 985, 7°); he uses a power which he really possesses, only in an illegitimate manner.

3°. Inferior clerics or laymen are never permitted to administer solemn baptism; by doing so they would incur an irregularity (Can. 985), as also would priests or deacons excluded by censure from the exercise of this function.

14. 4. *Minister of Private Baptism in Cases of Necessity.* (Can. 742, 743.) 1°. In case of danger of death any one having the use of reason can administer private baptism lawfully as well as validly, provided he applies the proper matter and form, that is, performs the ablution with natural water and pronounces the words, "I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost," with the intention of doing what the Church does. This intention does not necessarily depend on the personal views of the minister and it may exist in one who does

not believe in the efficacy of baptism, in original sin, or in the Divinity of Christ, as the Church has defined or declared on several occasions. When a person goes through the baptismal rite in the manner commonly received the presumption is that he means to do what the Church does.

The danger of death does not have to be immediate nor certain; a probability suffices. The Holy Office demanded, when interrogated on this point, a positive probability. (Jan. 11, 1899; Coll., P. F., n. 2032.) The Congregation of Propaganda, on the other hand, approved the practice of missionaries who gave instruction to their catechists or better-educated Christians to baptize newly-born children when no priest was expected or could be reached within ten days. (Coll. n. 939; cf. 593, 674.)

2°. Whenever possible, in such cases of private baptism two witnesses or at least one should be called, that they may testify to the fact and to the validity of the administration of the sacrament.

3°. Although every person, man or woman, Catholic or non-Catholic, baptized or unbaptized, can always baptize validly, the Roman Ritual and the Code prescribe to prefer, even in cases of urgent necessity, a priest if one is present to a deacon, a deacon to a subdeacon, a cleric to a layman, and a man to a woman, unless the woman knows the form and manner of baptizing better than the man, or some serious reason, such as decency, would demand preference for her.

According to a decree of the H. O. (Aug. 20, 1671), preference should be given also to Catholic laymen over schismatic monks. To these are assimilated ecclesiastics under censure or inter-

dict after condemnatory or declaratory sentence.

A special provision of law prevents parents from baptizing their children except in danger of death when there is no one at hand to administer the sacrament, that is, no one willing or duly qualified safely to perform the ceremony.

Any reasonable cause would justify a departure from the order here described; it does not ordinarily bind under pain of grave sin. Commonly, however, theologians consider it a grievous offence for a layman to baptize, without just cause, when a priest is at hand. They condemn with the same severity preference given to a non-Catholic over a Catholic.

4°. The Code, following the Roman Ritual, urges pastors to see that the faithful in general and more particularly midwives, physicians, and surgeons learn well the manner of administering baptism in cases of necessity. They should also understand thoroughly their duty in this matter.

15. 5. *Baptism of Adults.* (Can. 744.) The Church wishes to surround the baptism of adults with greater solemnity; for this reason the Code, confirming an ancient provision of the Ritual, recommends, without perhaps strictly commanding it, that all such cases be referred to the Ordinary, whenever convenient, that he may, if he chooses, perform the ceremony personally or through his delegate. He may also positively reserve to himself all those baptisms or, on the contrary, declare once and for all that he leaves them to the respective pastors. Existing customs may render any further declaration unnecessary. These rules do not apply to conditional baptism often administered secretly.

CHAPTER II

THE SUBJECT OF BAPTISM

(Can. 745-754.)

16. 1. *General Conditions and Division.* (Can. 745.) 1°. All and only human beings, living with independent personal life, in the wayfaring state, and never baptized before, can receive baptism.

2°. Ecclesiastical law divides candidates for this sacrament into two classes: the infants or children and the adults. To the first class belong in this matter all who do not actually enjoy and have never enjoyed the use of reason, young children, older but mentally undeveloped persons, and the insane from infancy. To the second class belong all who actually enjoy the use of reason whatever their age, even if under seven, and those who have enjoyed it at some time, like the temporarily insane.

All persons who actually possess the use of reason have by that very fact the right of asking for and receiving baptism without permission from parents, guardians, or other superiors. In case of doubt whether the use of reason or power of distinguishing right from wrong really exists, if circumstances did not permit delay till the doubt ceases, the presumption would stand in favor of the right to baptism.

17. 2. *Unborn Children.* (Can. 746.) 1°. Some heretics, whom St. Augustine refutes in his "Contra Julianum" (L. vi, c. 2; c. 114, D. 4),

maintained that the ablution performed on the mother's body would suffice for the baptism of the child in her womb. The Church has rejected that theory. An infant still enclosed in the womb so that it does not appear at all and the water would not reach it can not be baptized validly. Some theologians even maintain the nullity of the baptism administered, should it be possible, through an opening of the womb by means of an instrument such as a syringe, on the ground chiefly that to be born again spiritually one must be born first physically and subsist as an individual by one's self. (Benedict XIV, De Synodo Dio., l. vii, c. v.) Others admit the validity of the sacrament under such conditions at least as probable.

The Code forbids the baptism of a child enclosed in the womb as long as there remains a probable hope that it will be properly brought forth and then baptized; but it implicitly permits or even prescribes baptism in cases of necessity when otherwise the child would die without the sacrament.

2°. If the child puts forth the head and the danger of death is imminent, the ablution should be performed on the head with the absolute form, and if the child survives full delivery it does not have to be baptized again conditionally.

3°. If another limb than the head emerges first with the same imminent danger of death, such part of the body should be baptized conditionally, and after delivery the baptism repeated again *sub conditione*.

The Code does not distinguish here between the various parts of the body other than the head and their different degrees of importance as some

theologians used to do, but it treats baptism as certainly valid when the ablution takes place on the head, and as doubtful when the water reaches only any one of the other limbs.

4°. If a mother dies in pregnancy those whom it concerns should extract the fetus and if it shows clear signs of life it should be baptized absolutely; if its life is doubtful it should be baptized conditionally.

The duty of performing the operation rests with the surgeon or physician; the relatives of the deceased should permit it or even ask for it. Ordinarily the priest can do nothing more than urge fulfilment of this duty. Prudence and at times the civil law would not allow him to go beyond this.

Experience shows that, in cases particularly of pregnancies of four months or over and of rather sudden death, the infant may remain alive in the womb for a considerable time after the mother's death.

5°. A fetus baptized in the womb must always be baptized conditionally after full delivery.

18. 3. *Abortive Fetuses.* (Can. 747.) All abortive fetuses at whatever stage of their development ought to be baptized absolutely if they show sure signs of life and conditionally if only doubtful signs appear.

Aristotle and after him many of the scholastics held that human life begins in the fetus forty or even eighty days after conception; the opinion has generally prevailed among philosophers and theologians that it begins at the very moment of conception or during the first week of pregnancy. Not a few physiologists or embryologists, how-

ever, question the soundness of this theory and consider it without solid foundation. (Canon Dorlodot, *Darwinism and Catholic Thought*, Burns & Oates, 1922.) The prescription of the Code would seem to imply that the infusion of the human soul into the fetus coincides with the beginning of life, but some interpret it as referring specifically to human life at whatever moment it may begin and manifest itself. (Vermeersch, l. c., n. 31.) The legislator did not mean to solve this problem.

As the question remains obscure, all must agree that any living fetus ought to be baptized at least conditionally. Hence the obligation for midwives, surgeons, or physicians to take great care of the fetus in cases of premature birth or miscarriage and to examine closely the blood that has issued from the mother's womb, as the fetus is sometimes very small and may have the appearances of death although really living. Physicians themselves find it difficult to discern signs of life and some give as the only sure evidence of death, advanced putrefaction or decomposition. (Capellmann, *Medicina X Pastoralis*, p. 115; Antonelli, *Medicina Pastoralis*, vol. vii, n. 28; Dr. Surbled, *La Vie Sexuelle*, l. 5, c. 2.)

For the baptism of a fetus expelled prematurely from the womb and still enveloped in the secundine membranes they suggest to open these and expose the fetus to view in tepid water whilst pronouncing the words of the form.

19. 4. *Monsters*. (Can. 748.) Abnormal human beings, which canonists call *monstra*, *ostenta*, and modern scientists, human *terata*, appear in a multitude of varieties described by teratologists.

(Hirst and Piersol, *Human Monstrosities*, Philadelphia, 1891; O'Malley-Walsh, *Essays in Pastoral Medicine*, ch. vi.) Some bear the strongest resemblance to lower animals, others have a double face with two mouths, two tongues, etc., or two heads and only one trunk, or two heads and two hearts with only one pair of legs, etc.

As there exists no reliable record of a hybrid between a human being and a lower animal or any other creature of a different species, all living beings born of a woman must be considered as rational creatures, whatever the appearances to the contrary, and baptized at least conditionally.

In the case of the so-called composite monsters the question arises whether we have only one or several distinct persons. If there are certainly two, baptism should be administered twice absolutely; when the duality is only probable, baptism should be administered first absolutely, then conditionally. One head and one chest only would indicate only one person; double head and chest with one trunk would point to double personality and each head should be baptized absolutely. If there is one head and two chests or two heads and only one chest and trunk, baptism should be administered absolutely on the head and then conditionally on each one of the chests, or on one of the heads absolutely and conditionally on the other.

5. *Foundlings*. (Can. 749.) Infants that have been abandoned and found ought to be baptized conditionally unless a careful investigation establishes beyond reasonable doubt the fact of their baptism. A note from an unknown writer would not suffice for this.

20. 6. *Children of Infidels.* (Can. 750.) 1°. In the Middle Ages it occurred occasionally that Christians more zealous than discreet would baptize children of infidels, particularly of Jews, without consulting the parents. St. Thomas condemned this practice as contrary to the Church's tradition, involving violation of parental rights and leading to profanations of the sacramental character. (2^a 2^{ae}, q. x, art. 12.) Theologians generally followed his teaching; but Scotus and a few of his disciples claimed for Christian princes the right of compelling their infidel subjects to have their children baptized. With the opening of the New World to missionary activity the question became a very practical one. The Popes and Congregations solved all the cases referred to them in the traditional sense. Pope Julius III even punished with a heavy fine persons who would baptize the children of Jews without the consent of the parents. (July 16, 1639.) Still the controversy went on till Benedict XIV, having discussed the problem under its various aspects in several Constitutions (*Inter Omnigenas*, Feb. 2, 1744; *Postremo mense*, Feb. 28, 1747; *Probe te meminisse*, Dec. 15, 1751), officially laid down the rule forbidding to force baptism on the children of infidel parents. (*Dictionnaire de Théologie Catholique*, Baptême, coll. 341.)

2°. This rule admits of two exceptions: (a) The Pope permitted, as the Code now does, the baptizing of children in danger of death without consulting the parents. The danger does not have to be immediate; it suffices to have a good reason to believe that the child will not reach the age of discretion. The H. O. approved the

action of a missionary who, when visiting a certain district, would give baptism to all children whom he found in such condition of health that he did not expect them to live till his return. (July 18, 1894.) In such cases the danger of perversion for these children does not exist practically and the slight injury done to parents has its full compensation in the great benefit conferred upon the children.

(b) It is also permitted to give baptism to children without consent of their parents when there are neither parents nor grandparents nor guardians, or when these have forfeited their rights or can not exercise them. Under such circumstances the sacrament can be administered and the faith of the children protected afterwards without violation of parental rights.

3°. If the parents themselves present their children for baptism the sacrament may be administered to them, provided there is a sufficient guarantee that they will receive a Christian education.

This rule holds also when one only of the parents or tutors presents the child and the other opposes the baptism. The right of the one who asks for the sacrament, as more in conformity with the law of God and the interests of the child, prevails over that of the other. Benedict XIV supposed the parent who made the request for baptism to be himself a Christian, but the Code has no mention of this; nor does it affirm the right of grandparents to have children baptized against the will of the parents, as the Pope did.

21. 7. *Children of Heretics, Schismatics, or Fallen-Away Catholics.* (Can. 751.) Although

the Church, having authority over all baptized persons, might compel heretics, schismatics, and apostates to have their children receive the sacrament of baptism, ordinarily she does not exercise that right, and when both parents are non-Catholics she applies to their children the same rule as to those of infidels. If the parents or one of them would ask for the baptism it would be granted, provided the child would not run a special risk of perversion, otherwise it would not.

22. 8. *Baptism of Adults.* (Can. 752.) 1°. Three conditions are required for the valid and lawful reception of baptism in adults: the intention of receiving it, faith in the principal revealed truths, and contrition or at least attrition for all mortal sins. They should not be baptized, therefore, without their consent knowingly and willingly given, nor without proper instruction and admonition to renounce sin. The intention pertains to the validity of the sacrament, the other two dispositions to its fruitfulness.

(a) The Church demands an explicit intention whenever possible. Commonly theologians consider as insufficient even for the validity the intention contained in supernatural attrition and the general desire of taking the means necessary for salvation. (Ami du Clergé, 4 Avril, 1912, p. 322.)

De Lugo recognizes the strictly sufficient intention in the disposition of a man who, knowing the Christian religion, accepted it with all its teachings, its precepts, and its rites, although he never heard of baptism.

A few canonists and theologians still hold that the intention implied in supernatural attrition may

probably, strictly speaking, suffice for the validity and also for the lawfulness in cases of extreme necessity, and if Congregations and the Code speak of manifested, which seems to point to express, intention, they take this to refer to the ordinary and safe rule which does not exclude a probable one applicable to exceptional situations. (Cappello, n. 155; Vermeersch, n. 35; Lehmkuhl, II, n. 107; Noldin, n. 78.)

In the case of a Mahommedan dangerously sick but in possession of his faculties, the Holy Office declared it unlawful to give him baptism without speaking to him of our mysteries even though he might show signs of attrition and of good faith in his errors. (March 30, 1898, Coll. n. 1993.)

(*b*) The degree of instruction demanded before admission to baptism varies with the cases; regularly the candidate should learn according to his capacity the truths necessary by necessity of means and by necessity of precept. According to an Instruction of the Propaganda, the period of preparation should last at least forty days. A Synod of Nagasaki demands two or three months and one of Pekin (1880), a full year of study and probation.

(*c*) Real attrition would not exist in a catechumen who would not manifest willingness to obey all the laws of God and of the Church, to give up superstitious practices, dismiss an illegitimate wife, abandon an unlawful trade, etc.; hence the necessity sometimes of mentioning and laying special stress on some of these points.

23. 2°. Of converts in danger of death and in no condition to receive more complete instruction, the Code asks only, before administering baptism,

that they manifest in some way their assent to the truths of our faith, for example, by expressing acceptance of all that the Christian religion teaches or that Christians believe, and that they promise obedience to all the precepts of God and of the Church.

They must always be taught the truths necessary by necessity of means, including if at all possible the mysteries of the Trinity and the Incarnation. Promise of studying religion after recovery would not dispense from this, as the Holy Office declared. (Jan. 25, May 10, 1703.) Prudence may, at times, command silence in regard to certain obligations in order not to disturb good faith without any result.

3°. If they can not even ask for baptism, we must see whether they do at present show or whether they have shown in the past at least some probable evidence of a desire for baptism. If so, they must be baptized conditionally. Should they recover and the validity of their baptism remain uncertain even then, they ought to be baptized again conditionally.

The evidence here required does not have to be very clear nor very strong. A wish to receive baptism may easily be presumed and indications of it discerned in the actions or attitude of one in danger of death who has heard of the Christian religion. Opposition to the Church manifested by a man who, while in good health, strove thus to silence his conscience might, according to Lehmkühl, furnish sufficient reason to judge that probably now, that he sees death approaching, he desires to become a Christian and receive baptism. The same presumption may exist in favor of one

who refused baptism because of difficulties which have ceased or which must appear much less serious at this moment.

Hence some would consider it permissible in a Christian country to baptize conditionally any person found unconscious and probably not baptized before. And as much carelessness prevails even among Christians in regard to baptism, they would not readily presume baptism even in persons born to Christian parents, at least in the case of non-Catholics, and, in some places, particularly in large cities, in the case of Catholics themselves.

In pagan lands, among people who have generally no knowledge of the Christian religion, the same reason does not exist for presuming the existence of a desire for baptism, at least of a formal intention of receiving it; but as said before, some consider as probably sufficient the implicit intention contained in supernatural attrition, and as reasons for presuming the presence of this disposition with some knowledge of God and of His Providence may readily exist in the case of pagans also, they would admit the same rule for pagan as for Christian countries and baptize any person found unconscious and in a dying condition. However, although as a rule whenever we may administer baptism we should do so, they do not give it as more than permissible to baptize those who have not manifested, at least in some implicit and probable manner, a formal intention of receiving the sacrament. (Vermeersch, n. 35; Cappello, n. 159; Lehmkuhl, II, n. 106; Genicot, II, n. 150.)

24. 9. *Baptism of Insane or Delirious Persons.* (Can. 754.) 1°. All prescriptions regarding the

validity and lawfulness of the baptism of children apply to that of persons who have suffered from insanity under whatever form from birth or infancy.

2°. Those actually insane but who at some time had the use of reason must be treated as adults; hence necessity of consent on their part for even the validity of their baptism. While incapable of a free act they should not be baptized, but the sacrament should be deferred till they recover the use of their faculties.

3°. During their lucid moments they may be baptized if they choose and fulfill otherwise all required conditions. Should there remain no probable hope of their recovery or death seem imminent, the sacrament may be administered to them if, while in possession of their faculties, they manifested in some way the intention of receiving it, just as was said before of persons found unconscious and in danger of death.

4°. Persons in a lethargical or delirious condition should not be baptized while they can not and do not give their free consent to it. When in danger of death the same rule holds for them as for the insane and the unconscious.

25. 10. *Special Dispositions; Fasting and Communion.* (Can. 753.) 1°. Without imposing it as a strict obligation, the Code urges priests to remain fasting for the administration of baptism to adults and advises the candidates to receive the sacrament also fasting if the condition of their health permits.

In the ancient Church a general law required fasting of both the minister of baptism and the

subject in all cases, a practice introduced, no doubt with the custom of administering baptism on the vigils of Easter and Pentecost. A Council of Mayence held in 1540 still admonishes pastors to show proper reverence for the sacrament of baptism and administer it in the morning, not in the afternoon after eating and drinking. (Martène, *De Antiquis Ecclesiæ Ritibus*, vol. 1, p. 10.)

2°. Moreover, except for grave and urgent reasons, the neophyte should immediately after baptism assist at Holy Mass and receive Holy Communion. The rubric of the Ritual recommended this only when convenient. (Tit. 11, c. 4, n. 51.) The wording of the present law conveys rather the idea of a command, a serious one, since only grave reasons dispense from it, and an urgent one, since it ought to be complied with immediately. The term *statim* used by the Code, and translated by the word *immediately*, would seem to exclude all delay; still some canonists interpret it in a somewhat broader sense which, they say, it not infrequently bears in canonical language, as allowing two or three days for the fulfilment of the precept. Thus the custom which exists in some countries of administering baptism to adults in the afternoon and giving them Holy Communion the next day would remain legitimate. The fact that the same canon recommends but does not strictly prescribe fasting before baptism would seem to favor this view. (Vermeerch, l. c., n. 39.)

CHAPTER III

RITES AND CEREMONIES OF BAPTISM

(Can. 755-761.)

26. 1. Solemn Baptism. (Can. 775.) 1°. Confirming several ancient decisions of Popes and Congregations, the Code prescribes the use of the solemn form of baptism, or of all the rites and ceremonies of the Ritual, in all cases not expressly excepted by law.

This rule holds also for baptism administered in private dwellings (Jan. 17, 1914, A.A.S., vi, p. 32) and clearly imposes a serious obligation. A grave reason, however, would justify the omission of some non-essential ceremony. The Holy Office directed missionaries (Dec. 11, 1850), when they could not observe some of them, to conform as much as possible to the Ritual, but not to postpone on this account the administration of the sacrament with notable inconvenience to the candidate or other persons.

2°. The Ritual has a shorter form of baptism for infants and a longer one for adults. Regularly they ought not to be used one for the other, but the Church has allowed exceptions to this rule. Missionaries in foreign lands often found it difficult to conform to it in the baptism of their converts. In some places, as in Tonkin, they felt compelled to use the form for the baptism of children in the baptism of adults, and as their practice received the sanction of Rome others adopted it and it spread even in Europe. In the United States the Bishops obtained in 1830 for

twenty years faculties to use the formula for infant baptism in the baptism of adults. They had them renewed for five years in 1852 on the occasion of the confirmation of the First Plenary Council of Baltimore. The Fathers of the Second Plenary Council in 1866 petitioned the Holy See for a further general renewal for twenty or ten years, but the Congregation answered that Bishops should apply for this when the Indults they had secured in the meantime would expire. Those of the province of St. Louis, which at that time included several of the present provinces, had obtained those faculties to last until the Holy See would withdraw them (1859). Other concessions were made to various dioceses, but no general concession was granted for the whole country. By custom, however, the privilege had probably become general.

In 1897 Leo XIII, on the occasion of the Columbus celebrations for the fourth centenary of the discovery of the New World, granted to all Bishops of Latin America authority to allow all their priests for grave reasons to use the short formula in baptisms of adults.

And now the Code extends this concession to all Ordinaries. The rule remains the same; priests may not use one form or the other as they choose, but Bishops may for any grave and reasonable cause give permission to substitute the short for the long formula in the baptism of adults.

27. 2. Rite. (Can. 756.) 1°. Children ought to be baptized in the rite of the parents, to which they will consequently belong. (Can. 98.)

2°. When the parents belong one to the Latin,

the other to an Oriental rite, the child must be baptized in the rite of the father, except for some special provision to the contrary.

3°. If only one of the parents is a Catholic, the child must be baptized in the rite of that one and consequently in the rite of the mother if the father is, for example, a Greek schismatic.

Parents have no authority to dispense from these rules, and even if they themselves had their child baptized in another rite, he would still belong to their own. (Comm. Inter., Oct. 16, 1919, ad II.)

28. 3. *Baptismal Water*. (Can. 757.) 1°. Ancient Discipline. The Didache gives these directions for the administration of baptism (VII): Baptize in running water; in the absence of running water you may use any other, the water of a lake, or a cistern, hot or cold. If you have not enough of either you may pour water three times on the head in the name of the Father, and of the Son, and of the Holy Ghost.

We do not find either here or in St. Justin any trace of any special blessing of the water used for baptism; Clement of Alexandria (Excerpt. 82) and Tertullian (De Baptismo, iv) mention it for the first time, but henceforth great importance is attached to this rite, which in the West they consider chiefly as a purification and exorcism and in the East as a prayer intended to call down upon the water the grace of the Holy Ghost. (Labauche, o. c., p. 33.) The custom of mixing holy oil with the baptismal water existed at least in the sixth century, as St. Gregory of Tours speaks of it.

2°. *Present Rule*. (a) In private baptism

any water natural and pure suffices for both the validity and the lawfulness, although baptismal water, if at hand, should have the preference, particularly when a priest administers the sacrament.

For solemn baptism the Church, following an ancient tradition, prescribes the use of the baptismal water specially blessed for that purpose on the vigils of Easter and Pentecost, with the oils consecrated on the previous Holy Thursday if possible.

(b) If the supply of water in the baptismal font seems to become insufficient, common water may be added to it, but in less quantity; and as liturgists held formerly and the Code now explicitly declares, this may be repeated if necessary.

(c) If the water becomes putrid and unfit for use or runs out of the font or from whatever cause fails altogether, the pastor should carefully cleanse the font, pour into it a new supply of water and bless it according to the formula found in his liturgical books. The Roman Ritual gives a short form for private blessing in Tit. ii, c. vii, immediately after the prayers and ceremonies of baptism. The edition published by order of Pope Pius X contains also in an appendix a still shorter form granted by Paul III to the missionaries in Peru and afterwards to others by special Indult.

29. 4. Mode of Ablution. (Can. 758.) 1°. Ablution or washing with water, which constitutes the essential proximate matter of baptism, may take place by immersion, infusion (called also affusion), or aspersion. In the early Church baptism was ordinarily administered by immersion, but sometimes also by infusion. The circum-

stances of the baptism of St. Paul (Acts, ix, 18; xxii, 16) and of that of the keeper of the prison at Philippi (Acts, xvi, 33) point to infusion rather than to immersion. The Didache and other ancient writings give as reasons for the use of infusion instead of immersion scarcity of water or sickness of the catechumen. The monuments of Christian antiquity habitually represent immersion as only partial and accompanied by infusion. The small size of old baptisteries and the presence of a vessel for the pouring of the water indicate also the prevalence of this rite. (De Rossi, *Roma Sotterranea*, T. II, p. 334; Mgr. Wilpert, *Le Pitture delle Catacumbe Romane*, c. xiv, Roma, 1903; *Dictionnaire d'Archéologie et de Liturgie*, Baptême, coll. 300.)

The Eastern Churches have continued to this day to baptize by immersion, partial or total, although some of them use also infusion. In the Latin Church immersion remained the ordinary mode of baptism till the thirteenth century, but infusion commenced then to become more common and by the end of the fifteenth century it prevailed almost universally.

Some Protestant sects adopted later on the practice of immersion or of aspersion.

30. 2°. The Roman Ritual and the Code, whilst recognizing the validity of baptism by immersion, infusion, and aspersion, command the retention of immersion or infusion or a combination of the two, according to the practice received in every Church, but they do not mention aspersion.

Some ancient writers speak of aspersion in connection with baptism, but apparently they mean the same thing as infusion. Modern Protestants

also use the word in that sense. According to Corblet (*Histoire du Sacrement de Baptême*, I, p. 263), aspersion proper, which would consist in throwing water upon an individual or a group of individuals with the hand or the branch of a tree or in some other similar way, came into use only at a relatively recent date. It offers serious dangers; the water may fall only on the clothes of the person or only one drop may touch the skin and not flow, which would render the sacrament null or doubtful, as baptism supposes ablution or washing. The Holy Office (Dec. 14, 1898) ordered the conditional repetition of all the baptisms which a pastor had administered by way of unction, only dipping the thumb in baptismal water. (Coll., 2028.)

In 1770 missionaries in Africa asked the Holy Office whether they could not make use of a wet sponge to baptize dying children without attracting the attention of the parents; the Congregation answered that they should endeavor to have some water flow.

31. 5. *Private Baptism.* (Can. 759.) 1°. A person in danger of death may be baptized privately without any ceremonies. When it is a priest or a deacon who administers the sacrament under such circumstances, he should, if time permits, add immediately the ceremonies which in the Ritual follow the ablution or essential rite, not those which precede it. Any other person conferring baptism in such cases should only perform the ablution and pronounce the words of the form.

Ceremonies thus omitted for whatever reason ought to be supplied in church as soon as convenient.

32. 2°. Outside of these cases of danger of death baptism should always be administered in the solemn manner. The Code allows the Ordinary to make an exception to this rule only for the conditional baptism of adult converts, not for the baptism, therefore, *v. g.* of children nor for the absolute baptism of an adult convert.

(a) The rubrics of the Roman Ritual spoke of necessity as well as of danger of death in this connection, and a decree of the Propaganda had authorized missionaries to baptize privately in their homes children whom their parents refused to bring to church. (Aug. 30, 1776; Coll., n. 510.)

From this, and interpreting the term "necessity" in a broad sense, some canonists or liturgists had concluded that Ordinaries might, for any reasonable cause, grant permission to give baptism to a child privately and then have the solemn ceremony in church later when found convenient, for example, when the sponsors or friends come. This practice had become quite common in certain countries. The present law does not admit of this interpretation.

(b) For the baptism of converts some Bishops had obtained formerly special concessions.

In England, at the beginning of the nineteenth century, the Vicars Apostolic, seeing the growing carelessness of Protestants in regard to baptism, decided to baptize conditionally all those born since the year 1773 who would enter the Church except for very clear proofs of the validity of their former baptism. The First Provincial Council of Westminster maintained the same policy (1852, xvi, 7, 8) and with the approval of

Rome ordered priests in such cases to repeat baptism privately, with holy water and without the ceremonies.

The Fathers of the Second Council of Baltimore (1866, n. 244) petitioned the Holy See for the same dispensation from the solemn form in conditional baptisms of adult converts, but the Congregation did not deem it expedient to grant their request. Under the present law all Ordinaries can dispense.

33. 6. *Supplying of Ceremonies in Baptism.* (Can. 760.) In conditional baptism, except that of adult converts, when the Ordinary dispenses, the minister should supply the ceremonies omitted in the first baptism. Those which had been performed he may supply or omit as he chooses.

From these prescriptions of the Code and those of the Ritual which remain in force we may draw the following rules:

(a) Ceremonies omitted in a Catholic baptism ought to be supplied as soon as convenient, even after a long delay, in church, from the formula for infant baptism even when the subject has reached the adult age.

(b) To children invalidly or doubtfully baptized in a non-Catholic sect and now received into the Church baptism ought to be given absolutely or conditionally with the ceremonies for infant baptism, unless these had been used in the first baptism. (H. O., Ap. 2, 1879, Coll. n. 1516.)

(c) Adult converts never baptized before or not validly should be baptized absolutely in the solemn form unless baptism had been invalidly administered to them with the required ceremonies and according to the rite prescribed for adults;

the Ordinary may permit the use of the shorter one.

(*d*) The same rule applies to adult converts baptized conditionally, but the Ordinary may dispense also from the solemn form and permit private baptism.

(*e*) In the reception into the Church of an adult convert baptized validly but without the ceremonies, these should regularly be supplied; but the contrary custom has prevailed in many places with the tacit approval of ecclesiastical superiors. (Cappello, l. c., n. 180.)

34. 7. *Christian Name.* (Can. 761.) 1°. Christians soon adopted the practice of imposing names in baptism as the Jews did in circumcision. During the persecutions motives of prudence may have deterred them at times from using those which would have indicated too clearly their change of religion, but when in the fourth century the Church had secured state recognition Bishops commenced openly to exhort their people to place themselves under the patronage of the saints. The Arabic collection of the Nicene canons contains a prohibition for the faithful to give their children any but distinctively Christian names. Scholars generally do not admit the authenticity of this text, but it represents a very ancient discipline. St. John Chrysostom censures the prevailing fashion of giving a child his father's or grandfather's name without regard to the import of the name itself. Such, he says, was not the custom in ancient times. Special care was taken to choose for children names which would incite to virtue those who received them and also serve as admonitions to others. Let us not, therefore,

he concludes, give chance names to children nor seek to gratify fathers or grandfathers or relations by giving their names, but rather let us take the names of holy men conspicuous for virtue before God. (Migne, P. G., 53, p. 179.) Ancient writers tell us that many parents gave to their children the names of the Apostles, particularly of Peter, Paul, and John, or of the most illustrious among the martyrs and afterwards of the national patrons, James or Diego in Spain, Andrew in Scotland, Maurice in Switzerland, Martin in France, Patrick in Ireland. (Eusebius, H. E., L. vii, c. 25; Martène, o. c., L. i, c. i, art. x; Smith, Dictionary of Christian Antiquities, Name; Martigny, Dictionnaire des Antiquités, Chrétiennes, Noms.)

35. 2°. The Code, renewing the prescriptions of Clement XII and Benedict XIV and of the Roman Ritual, urges pastors to take care that all the persons they baptize receive a Christian name; if they can not obtain this, to the name given by the parents they should add the name of some saint, and enter both in the baptismal book.

Neither the words of the Ritual nor those of the present legislator imply a rigorous precept for the faithful to use no other than Christian names, but they contain an admonition for the pastor to see as far as he can that parents conform to Christian tradition. If they insist on a name which has no place in the Calendar or the Martyrology, he should not feel bound to reject it unless it would be altogether unbecoming. The Tribunal of the Holy Inquisition refused to sanction as too severe a rule made by a prelate of the eighteenth century excluding all names not found

in the Martyrology. The liturgist Baruffi observes that hardly a name can be thought of which has not been borne by some one of the faithful, now amongst the saints, though not mentioned in the Calendar. A writer says that martyrs often encountered death bearing the names of the very divinities to whom they refused to offer sacrifices. In any case, we can add or prefix to the name insisted on by parents the name of a saint, as the Code recommends.

CHAPTER IV

SPONSORS

(Can. 762-769.)

(Martène, o. c., L. i, c. i, a. xvi, n. 11; Corblet, o. c., L. xii, c. i; Smith, o. c., Sponsor; Bingham, Antiquities of the Christian Church, B. xl, c. vi.)

36. 1. *Origin.* At the end of the second or beginning of the third century Tertullian refers to the responsibilities assumed by sponsors in baptism and represents their office as an already ancient institution. (De Baptismo c. xviii.) Some have tried to find for it a biblical foundation or seen in it an imitation of some Jewish rite. Necessity suffices to account for its introduction from the beginning. In baptism by immersion the minister needed assistants, *susceptores*, to receive the neophyte when he came out of the font. In the case of children some one had to present them, answer in their name the interrogatories, and guarantee their Christian education should the

parents die or fail to comply with their duty, as might often occur in times of persecution. To adult candidates the Church could not grant baptism without some security and the testimony of a well-known and reliable Christian who would vouch for their good character and future perseverance.

2. *Necessity.* (Can. 762-763.) Although circumstances changed in many respects, the Church always maintained the ancient tradition, as the present law also does.

(a) As far as possible, no one should receive solemn baptism without a sponsor. Only a grave reason would dispense from this rule.

(b) In private baptism there should also be a sponsor whenever convenient. The wording of the law implies here, too, an obligation, although a conditional and not a grave one.

(c) When baptism has been administered privately without sponsor one should be secured for the supplying of the ceremonies, but he does not contract any spiritual relationship.

(d) In the conditional repetition of baptism the same sponsor should, if possible, be employed as in the first baptism. If this proves impossible for whatever reason, there is no need of using any sponsor at all in that case.

When baptism is administered conditionally, the person who acts as sponsor does not contract spiritual relationship unless he acted as sponsor also in the first baptism.

37. 3. *Number of Sponsors.* (Can. 764.) Ancient writers speak of only one sponsor at each baptism. A Council of Metz in 888 (Can. 6)

forbids more than one. In the thirteenth and fourteenth centuries several Synods permit three, two men and a woman for a boy, two women and a man for a girl. (Salisbury 1217, Treves, 1227; Worcester, 1240.) Even that number was at times exceeded. Philip I, king of France, had three godmothers and as godfathers three Abbots of monasteries. According to some historians, the children of noble Venetian families often had as many as twenty or a hundred sponsors; parents used this as a means of multiplying protectors and also presents for their offspring. In other places they took as sponsors a moral body, a corporation. A Bishop of Amiens had as his sponsors the municipal council of his native town. (Corblet, o. c., vol. ii, 240.)

Particular Synods repeatedly condemned these practices as calculated to bring a sacred rite into disrepute, creating confusion and multiplying marriage impediments without reason. The Council of Trent, to remedy the evil, formally decreed that only one sponsor would be admitted or at most two, a godfather and a godmother. (Sess. XXIV, de Ref. Mat., c. 2.)

The Code renews this enactment and it declares that the one sponsor does not have to be of the same sex as the person he stands for.

38. 4. *Conditions for Sponsorship.* (Can. 765-767.) The Church always laid great stress on the choice of suitable persons as sponsors. Various Synods exclude from this office all catechumens, heretics, schismatics, penitents, monks and nuns, persons under excommunication or interdict, those not confirmed or not sufficiently in-

structed in their religion, *v. g.* such as could not recite the Apostles' Creed and the Lord's Prayer. (Auxerre, 578.)

The present law embodies most of those ancient prescriptions, defining some of them with greater precision.

1°. To act validly as sponsor a person:

(*a*) Must have received baptism, enjoy the use of reason, and have the intention of undertaking that office.

(*b*) He must not belong to any heretical or schismatic sect; there must not have been any sentence against him either condemnatory or declaratory pronouncing him excommunicated or infamous by law or excluded from legitimate or legal ecclesiastical acts (Can. 2256); he must not be a deposed or degraded cleric. (Cf. Penal Legislation, n. 109, 161.)

(*c*) He must not be either the father or the mother or the consort of the one baptized.

(*d*) He must be designated for the office either by the one to be baptized or by the latter's parents or guardians or, in their default, by the minister of baptism. Subsequent approval would not suffice.

(*e*) The sponsor must either personally or by proxy, at the moment baptism is actually conferred, physically hold or touch the one baptized or receive him immediately from the sacred font or from the hands of the minister. Persons laboring under any of the above-mentioned disqualifications can assist at the ceremony as witnesses, hold the child materially as nominal sponsors; but they will not be real sponsors in the legal canonical sense of the term, and if they can

not act personally they can not act by proxy either.
39. 2°. In order that one may licitly act as sponsor and be legitimately accepted as such:

(a) He must have reached, not necessarily have completed, his fourteenth year of age; the minister may, however, for any reasonable cause admit one somewhat younger.

(b) He must not have become excommunicated, or excluded from legitimate ecclesiastical acts, or legally infamous, because of a notorious crime, even though no sentence would have intervened. As said before, if there had been a condemnatory or declaratory sentence pronounced in his case he could not act as sponsor even validly; on the other hand, to render his action even unlawful, the cause of his excommunication, exclusion from legitimate acts or infamy of law must be a notorious, which means more than public, crime. (Can. 2197; Penal Legislation, n. 6.) A freemason publicly and universally known as such may not act as sponsor at a Catholic baptism. (H. O. July 5, 1878.)

Nor should the sponsor be publicly known as under interdict or guilty of some crime, or be infamous in fact, which latter would suppose that because of some misdeed or wicked general conduct he has lost the esteem of honest and right-minded Catholics.

(c) He must know the rudiments of the faith.

(d) He must not belong to a Religious Order either as a novice or as a professed member. In cases of necessity, however, a Religious may act as a sponsor with the express, not merely presumed, permission at least of the local superior.

(e) He must not be in Major Orders unless

he obtains the express permission of his own Ordinary, that is, of the one to whom he belongs canonically. This exclusion does not apply to clerics in Minor Orders.

3°. In doubtful cases as to whether one can validly or lawfully act as sponsor in baptism, the Code directs the pastor to consult the Ordinary if time permits.

40. 5. *Spiritual Relationship Arising from Baptism.* (Can. 768.) Christians from the beginning looked upon those from whom they had received the sacrament of regeneration or new birth as their spiritual fathers. Clement of Alexandria and other early writers often speak of this relationship. Little by little this spiritual paternity was extended to others who had coöperated in the administration of baptism, particularly the sponsors, called also for this reason *patrini*. To the paternity was added the commaternity or commaternity, direct or indirect, that is, the relationship between the sponsors and the parents of the baptized person or between the baptized person and the husband and wife of the sponsor; then the confraternity or relationship between the baptized person and the children of the spiritual father or mother.

In the course of time the Church gave a legal character to these spiritual relationships by recognizing them as impediments of marriage in much the same manner as blood relationships. The Code of Justinian prohibits marriage between the baptized person and a sponsor on the ground that nothing can so much call out fatherly affection and the just prohibition of marriage as a bond of this kind by means of which, through the ac-

tion of God, their souls are united to each other.

In order to reduce the number of marriage impediments, the Council of Trent abolished indirect compaternity and spiritual fraternity, retaining only spiritual paternity and direct compaternity.

The present law has abolished also compaternity. Spiritual relationship exists now only between the baptized person and the minister or the sponsor.

41. 6. *Duties of Sponsors.* (Can. 769.) 1°. In a sermon formerly attributed to St. Augustine the preacher admonishes "all men and women who have stood for children at baptism to recognize that they are sureties to God for those whom they have received from the font; you must urge them," he adds, "to preserve chastity, love, justice, charity, and above all things teach them the Creed, the Lord's Prayer, the Ten Commandments, and the first rudiments of the Christian religion." Old Rituals contain similar instructions for sponsors. They must watch over their spiritual children and see that they do what they promised in baptism. A Ritual of Autun recommends that they guard them particularly against the danger of fire and water till the age of seven and teach them the *Pater* and *Credo*. Synodal Statutes of the diocese of Avignon in the fourteenth century have an unusual provision; they forbid godfathers to make presents to the child, the mother, the godmother, or the nurse, because the contrary practice had rendered the office of sponsor so onerous that it had become difficult to find any one willing to assume the burden, and as a result not a few children had died without

baptism. (Martène, l. c., art. xvi, n. 15, 16.)

2°. The obligations of sponsors remain essentially the same now as of old. According to the Code, it is their duty by virtue of their office to look upon their spiritual children as their perpetual charges, to instruct them carefully in their religion, and see to it that all through their life they live up to the promises made in their name on the solemn occasion of their baptism.

This duty of sponsors is a grave one, but it binds them only secondarily, in case the parents would neglect the Christian education of the children. In a Catholic community sponsors may ordinarily presume that parents will comply with the obligation which devolves primarily upon them.

CHAPTER V

TIME AND PLACE OF BAPTISM

(Can. 770-776.)

(Martène, l. c., 1; Chardon, *Histoire des Sacrements*, Du Baptême, 2° Partie; Dictionnaire d'Archéologie, Baptistère; Smith, Dictionary, Baptistery; Bingham, Book viii, c. 7; xi, o. 6.)

42. 1. *Ancient Discipline.* 1°. Time. St. Peter's converts on the first Christian Pentecost were apparently baptized on that same day or shortly after (Acts ii, 41); the deacon Philip baptized the Ethiopian eunuch on the roadside as soon as he manifested his wish to receive the sacrament (Acts, viii, 36); at Philippi, St. Paul converts his

jailer and baptizes him at once with his household. (Acts, xvi, 32.)

The first mention of any particular season for the administration of baptism is found in Tertullian. (*De Baptismo*, c. 19.) Easter, he says, offers a more solemn day for baptism, for then was fulfilled the passion of the Lord into which we are baptized . . . and afterward Pentecost wherein was the Resurrection of the Lord celebrated among the disciples and the graces of the Holy Spirit bestowed. But, he adds, every day is the Lord's; no day, no hour, is unsuitable for baptism; the solemnity may be less, but in the grace given there is no diversity.

From this time on Christian writers, then the Popes and Councils, often refer to Easter and Pentecost as the proper time for solemn baptism and urge observance of these feasts. In several Churches the Epiphany was kept in the same manner and in a few also Christmas, the feast of St. John the Baptist, the festivals of the Apostles and principal martyrs.

This applied only to solemn baptism. Private baptism in cases of urgent necessity, from sickness or any other cause, was legitimately administered on any day of the year.

As in the course of time baptisms of children grew more numerous and those of adults fewer, the Councils admitted more and more readily the existence of sufficient reasons for immediate baptism, and hence very few candidates remained for the solemn ceremony of the vigil of Easter or Pentecost. Several Bishops in the ninth or tenth century complain that they have not more than three or four every year. Some Synods made an

effort to restore or maintain the ancient tradition, but by the end of the tenth or the beginning of the eleventh century it had ceased to exist as a rule and remained only as a praiseworthy practice where circumstances permitted.

43. 2°. Place. The same freedom prevailed in the beginning in regard to the place as to the time of baptism. The baptisms recorded in the Acts appear to have been administered wherever the subject happened to be, on the wayside, in jails, in private houses. (viii, 36; ix, 18; xvi, 29.) The Didache recommends a running stream, a lake, or a pool.

The growth and organization of the Church and the custom of reserving the solemn administration of baptism for Easter and Pentecost rendered necessary the provision of some special place also for it.

During the times of persecution, when Christians could not have churches of their own, they usually celebrated the divine services in private houses. There also they had their first baptisteries or first provisions made for the solemn administration of baptism. When afterwards they erected churches they reserved therein a place for this purpose, or frequently they built for it a special edifice. Some of these baptisteries had the proportions of churches and could accommodate Bishops assembled in council.

Originally the episcopal city alone had a baptistery, to which catechumens repaired for baptism from all parts of the diocese. Rome had several baptismal churches, but this was an exception; even large cities like Florence, Pisa,

Padua had only one for several centuries; Bordeaux had three.

When country parishes had grown in importance the Bishops granted the privilege of administering baptism to the priests in charge of the principal ones, the *ecclesiæ matrices* or *baptismales* usually located in the *vici*, and under the direction of the archpriests. Gradually the privilege was extended to some of the others, although not to all. Popes granted it also to some monasteries. St. Gregory did not encourage this; he positively forbade baptisteries in private oratories and in monasteries except for some grave reason. (Dictionnaire de Théologie, Baptistère, coll. 380.)

Gradually by custom and particular law the churches which had a baptistery or a font had become the regular place for baptism, but the practice of baptizing in private houses under circumstances of emergency has existed to the present time in missionary countries.

44. 2. *Present Legislation.* 1°. Time of Baptism. (a) A special provision of law enjoins all possible promptness in baptizing children and directs pastors and preachers often to remind the faithful of their duty in this grave matter.

The word *quamprimum* used by the Ritual and by the Code is interpreted by some canonists in a very strict sense, allowing only three or four days for fulfilment of the law (Cappello, l. c., n. 149); others extend the time to eight or ten days, unless particular statutes have a prescription to the contrary. What delay after that would constitute grave matter can not be defined with cer-

tainty in the absence of any authoritative decision and of any commonly accepted teaching of theologians. (Noldin, n. 65; Genicot, II, n. 146; St. Alphonsus, l. vi, n. 118; Vermeersch, l. c., n. 52.)

For adults canon law contains no enactment urging reception of baptism, but the Divine law obliges them to ask for it as soon as they recognize its necessity for salvation. As in their case, however, the danger of death does not exist as commonly as in that of children, the obligation will not be as pressing. The Church admits this when she still advises to reserve the baptism of adults for the vigils of Easter or Pentecost. A grave reason even of the natural order, like a notable material loss, would excuse them from it temporarily. Theologians generally consider them as guilty of a serious offence if they put off their conversion for a long period of time. (Suarez, *De Sacramentis*, p. 1, disp. 31, sect. 2.). St. Thomas seems to believe that they, strictly speaking, fulfill the divine precept as long as they intend to receive baptism before they die. (Suppl. q. 6, art. 5; Genicot, II, n. 149.)

(b) Any day of the week or of the year is suitable under the present discipline for both the private and the solemn administration of baptism. Only in memory of the ancient practice of the Church, the Code suggests, that whenever convenient, adults be baptized on the vigils of Easter and Pentecost, particularly in metropolitan or cathedral churches. (Can. 772.)

45. 2°. Place of Baptism. (Can. 771, 773-776.) (a) Private Baptism. In cases of urgent necessity baptism may and should be admin-

istered in any place. Ordinarily if baptism is administered privately it is because of some urgent necessity, not always, however, as for example, conditional baptism of converts. Without saying so explicitly, the present canon implies that in such cases private baptism too should be conferred in church.

(b) Solemn Baptism. (i) Baptismal Churches. Confirming the prescriptions of the Ritual and several decrees of ancient Councils or of Popes, particularly of Clement V (I, III, 15, in Clem.) and of Benedict XIV (*Magno cum*, June 2, 1751, § 19), the Code assigns as the proper place for baptism the baptistery or baptismal font in a church or public chapel; not a private chapel nor a church that has no baptismal font.

A decree of the Congregation of Rites leaves it to the prudence of the Bishop to allow the administration of baptism at one of the altars of the church outside of the baptistery. (Sept. 1, 1880.) To administer it in the sacristy would require a reasonable cause approved by the Ordinary if possible. (March 14, 1861, n. 3104.) Some diocesan Rituals published with proper authorization permit the administration of baptism during the cold season in the sacristy and even in one of the rooms of the rectory becomingly fitted up for that purpose. (Noldin, 81.)

Every parish church may and should have a baptismal font. Formerly some churches or chapels possessed by special statute, privilege, or custom the right of administering baptism to the exclusion of certain parish churches. The Code has abrogated those statutes, privileges, or customs. The chapels or churches in question retain

the right of baptizing they had, but it has ceased to exclude or limit the right of parish churches. (Monitore, Feb. 1923, p. 48.)

For the convenience of the faithful who can not without difficulty go to the parish church on account of the distance or from some other cause, the Ordinary may permit or even order the erection of baptismal fonts in other churches or public chapels within the boundaries of the parish, as in chapels of ease, mission churches or stations, but not in private or semi-public chapels.

46. (ii) Non-baptismal churches. If on account of the distance or for some other cause, like unsafety of roads or contagious disease in a certain locality, the candidate for baptism could not without grave inconvenience or danger go or be brought to the parish church or to any other church having a baptismal font, the pastor may and even ought to give him solemn baptism in the nearest church or public oratory within the boundaries of the parish, although it has no right to a baptismal font. These measures clearly manifest the wish of the legislator to facilitate administration of baptism in places dedicated to divine worship rather than in secular dwellings.

47. (iii) Private Houses. (Can. 776.) The present law explicitly forbids solemn baptism in private houses except under the following circumstances:

1) The sons or grandsons of supreme temporal rulers, kings, emperors, or presidents of republics actually in power, or of their prospective successors may, at the request of these actual or prospective rulers presented to the Ordinary or parish priest, receive baptism in private resi-

dences. This is an ancient concession now restricted to sons of rulers actually in authority but extended to all rulers, whether kings or presidents of republics.

2) The Ordinary of the place may for a just and reasonable cause in some exceptional case permit baptism in private houses if in his conscience he deems it advisable. The cause does not have to be very grave, but only just and reasonable; as, for instance, if the father absolutely refused to have the child taken to church and consented to baptism only in the house; if without being in danger of death the party suffered from some infirmity which rendered and would probably render it impossible for him ever to go or be brought to church; if baptism in church with the publicity it would unavoidably entail might seriously endanger the good name of the parents. These and other causes may frequently exist in missionary countries, and for this reason Vicars Apostolic often obtain and grant to their priests a general-permission to be used when circumstances render recourse to the Ordinary impossible.

3) In all such cases baptism must be administered in the solemn, not private, manner, with regular baptismal water, in the private oratory of the house or some other decent place, not in the residence of a non-Catholic, as the H. O. declared. (Jan. 21, 1767, Coll., n. 465.) The Church now insists on solemn baptism even in private houses whenever possible in preference to private baptism. (Conc., Jan. 20, 1894; Dec. 23, 1912; S. R. C., Jan. 17, 23, 1914; *Nouvelle Revue Théologique*, Jun. 1914, p. 361; *Canoniste Contemporain*, 1914, p. 153, 215, 314.)

CHAPTER VI

RECORD AND PROOF OF BAPTISM

(Can. 777-779.)

48. 1. *Baptismal Record.* Pastors ought to enter into the baptismal book the names of the persons baptized, of the minister, of the parents and sponsors, with the date and place of baptism.

This duty rests with the parish priest personally by virtue of his office as the qualified witness of baptism, having authority to draw up a document which will have legal value. He should regularly keep the records himself, not commit this work to some one else, at least not habitually without some serious reason. He remains responsible for the proper recording of baptisms even when he has not administered them himself.

The law demands that he should enter them into the baptismal register carefully, with scrupulous accuracy, without delay, which canonists take to mean immediately after the ceremony or at least the same day if possible; the Ritual says before the baptized party and the sponsors leave the church.

In the baptism of illegitimate children the name of the mother should be entered if she is publicly known as such or if of her own accord she asks for it in writing or in presence of two witnesses. In like manner the name of the father should be entered if he spontaneously, in writing or in the presence of two witnesses, asks the pastor to do so; or if he be known as the father of the child

from an authentic public document. In all other cases the child should be put down as born of unknown father or parents.

When a baptism has not been administered by the pastor, nor in his presence, the minister—priest, deacon, or lay person—ought as soon as possible to notify the pastor of the domicile of the person baptized, that is, of his parents in the case of a child. If they had no domicile the notification should apparently be sent to the pastor of their quasi-domicile or residence.

49. 2. *Proof of Baptism.* When the interests of a third party are not involved, the word of one absolutely trustworthy witness or the sworn testimony of the person baptized as an adult suffices to prove the baptism. This implies that when the fact of the baptism or non-baptism of one person may affect another—as if, for example, the validity of a marriage depends on it—a regular legal proof would be required to establish it, that is, ordinarily either an official document like the certificate extracted from the baptismal record and duly authenticated by the pastor, or the testimony of two reliable witnesses or of one qualified witness, such as the parish priest.

TITLE II

CONFIRMATION

(Can. 780-800.)

(Blat, n. 72; Cappello, n. 193; Vermeersch, n. 57; Labauche, II; Martène, l. c., L. I, c. ii; Duchesne, Christian Worship, c. ix; Catholic Encyclopedia, Baptism; Dictionnaire de Théologie Catholique, Confirmation; Dictionnaire d'Archéologie Chrétienne et de Liturgie, Confirmation.)

PRELIMINARY NOTES ESSENTIAL ELEMENTS OF THE SACRAMENT

(Can. 780-781.)

50. 1. The Book of Acts shows the Apostles imparting the Holy Spirit by the laying on of hands. (viii, 14-17; xix, 6.)

In ancient liturgies and other ecclesiastical writings which give the order of baptism and confirmation in the second and third centuries, after the baptismal ablution we find the anointing with oil, the imposition of hands, and the *consignatio* or marking with the sign of the cross.

(a) It does not always appear clear at first whether the unction forms part of the rite of baptism or of that of confirmation. In Tertullian and St. Cyprian it would seem to belong to baptism; Clement of Alexandria and Origen connect it rather with confirmation. In the Greek

Church generally it soon became one of the essential elements of confirmation, so important that in a sense it absorbed the others. The decretal of Innocent I (March, 416) shows that at the beginning of the fifth century and probably before, it occupied a prominent place in the liturgy of the Roman Church also.

(b) The imposition of hands was, no doubt, universally used in the administration of confirmation in sub-Apostolic times and it has continued in use to the present day, at least as contained in the rite of anointing, but as a distinct ceremony, in the Oriental Churches outside of the Coptic, Ethiopian, and Chaldean liturgies, it is hardly ever referred to after the third century. The Roman Church has always retained it even as a distinct rite. In the Roman Pontifical the confirmation service begins with a general imposition of hands accompanied with a prayer. Formerly, till about the fourteenth century, the Popes imposed the hands on each candidate individually. But the *Decretum ad Armenos* does not require this imposition of hands for the valid administration of confirmation, nor does Benedict XIV in the Const. *Ex quo primum* (March 1, 1756); and the Church does not question the validity of confirmation administered by the Greeks without imposition of hands distinct from the unction with chrism.

(c) Tertullian, St. Cyprian, Pope Cornelius, and the Canons of Hippolytus speak of the *consignatio* without mentioning any unction in connection with it. St. Ambrose himself, in his "De Sacramentis," observes the same silence; but in other documents the unction appears at a very early date together with the *consignatio*. In the

Roman Church the change had taken place apparently when, in the course of the third or fourth century, priests had become the ordinary ministers of baptism and received permission to perform the unction with chrism on the head of the neophytes and to the Bishops had been reserved the anointing which would now accompany the *consignatio*. (Dictionnaire d'Archéologie, coll. 2531; Mason, The Relation of Confirmation to Holy Baptism, p. 88, London, 1891; P. Gauthier, S.J., La Consignation à Carthage et à Rome, in Recherches de Science Religieuse, 1911, 350-383.)

The words pronounced by the minister whilst performing the unction served to determine its meaning with greater clearness. In the ancient liturgies they usually take the form of acclamation or declaration: "Unctio doni Spiritus Sancti; Signaculum gratiæ Spiritus Sancti; Signum Christi in vitam æternam." About the tenth century appear the indicative formulæ: "Confirmo te in nomine Patris" . . . (Ordo Romanus Vulgatus); "Signo te signo crucis et confirmo te chrismate salutis, in nomine Patris." . . . (Roman Pontifical.) Some contain an invocation of the Blessed Trinity and others do not. (Martène, l. c., c. 2, art. iv.)

51. 2. This diversity of practice has given rise to many theories and to controversies, which the Council of Trent did not attempt to settle, about the true nature and the constituent elements of confirmation. The Code did not have to deal with the dogmatic aspect of the sacrament but only to lay down a practical rule which, neglecting

none of the indications furnished by ancient tradition, would secure its valid and lawful administration. Consequently it prescribes that it be conferred by imposition of hands and anointing of the forehead with holy chrism, and by the words given in the pontifical books approved by the Church.

(a) The imposition of hands and the unction are both necessary. In our present practice they go together; in performing the unction the Bishop places his hand on the head of the candidate and thus the unction is made through the laying on of hands.

(b) The chrism, a mixture of olive oil and balsam, must be blessed by a Bishop with a special blessing. Use of the oil of catechumens or of the sick would render the sacrament doubtful.

Even when a priest has received from the Holy See authorization to administer confirmation he must use chrism consecrated by a Bishop.

(c) The unction must be made on the forehead, in the form of a cross and immediately, without the use of an instrument.

Thus we have the imposition of hands, the unction, and the *consignatio* in one and the same act.

(d) The Code does not contain any special enactment regarding the words to be used, but refers to approved pontifical books and to the rules therein laid down by the Church.

CHAPTER I

THE MINISTER OF CONFIRMATION

(Can. 782-785.)

52. 1. *Ordinary and Extraordinary Minister.*

1°. In the New Testament it is always the Apostles who impart the Holy Spirit by the imposition of hands, even when others have administered baptism. (Acts, viii, 14-17.) Their successors, the Bishops, enjoyed the same privilege in the early Church, as we see in the writings of St. Cyprian, the Canons of Hippolytus, the Synod of Elvira (305, Can. 38, 77), and later on in the letters of Popes Innocent I, Leo I, and Gelasius.

During the second and third centuries Christian initiation, which included baptism and confirmation, usually took place both in the East and the West in presence of the Bishop, who might delegate some of his priests or deacons to confer baptism but always reserved to himself the imposition of hands. Those who because of sickness received baptism in their homes had to come when in good health to the Bishop for confirmation.

When in the course of the fourth century country parishes had been established the priests who had charge of them administered baptism frequently without the presence of the Bishop, but they were forbidden, at least in the West, to proceed to the imposition of hands and the consignation. By way of exception Pope Gregory the Great permitted this to priests in Sardinia, and the First Council of Toledo (400, Can. 20) made

the same concession to priests in Spain under certain conditions, but the Council of Seville withdrew it in 619.

In the Greek Church, when parish priests had to administer baptism in the absence of the Bishop, they often gave also confirmation. This practice, at first perhaps exceptional and confined to certain places, gradually became habitual and extended to the whole East.

The Latin theologians, particularly since the ninth century, affirmed very explicitly that only Bishops had the power to administer confirmation; the Greeks replied by pointing to the practice of their Church from time immemorial; hence controversies which lasted for centuries without any good result. St. Thomas showed how the two positions could be legitimate by explaining that whilst Bishops possess that power by ordination the Holy See can grant it to priests. For the sake of peace Eugene IV, after the Council of Florence, declared in the *Decretum ad Armenos* that the Roman Pontiffs had tacitly conferred that privilege on all Greek priests.

The Council of Trent defined afterwards that Bishops alone are the ordinary ministers of confirmation, which implies that there may be extraordinary ones. (Sess. VII, c. 3; sess. XXIII, c. 4, can. 7.)

53. 2°. The Code affirms again the doctrine defined at Trent and adds that a priest may administer confirmation as extraordinary minister when he has received this power either from common law or by special Indult of the Holy See. Bishops can not now communicate it to priests.

By common law this power belongs to the

Cardinals of the Roman Church, to the Abbots or Prelates Nullius, to the Vicars and Prefects Apostolic.

Cardinals may exercise their prerogative anywhere and in favor of any person, provided only they record the fact in the confirmation book. (Can. 239, § 1, n. 23.) Abbots or Prelates Nullius, Vicars and Prefects Apostolic, can use their faculties only within their own territory and during their term of office.

Priests of the Latin rite who possess this power by virtue of an Indult can validly administer confirmation only to the faithful of their own rite unless the Indult expressly provides otherwise. This limitation does not hold in the case of those who have the power by common law nor in that of priests of the Greek rite, since the canon mentions those of the Latin rite.

It is declared unlawful, however, if not invalid, for Greek priests who enjoy the privilege of administering confirmation as well as baptism to children of their rite to administer it also to children of the Latin rite.

54. 2. *Exercise of this Power.* (Can. 783, 784.) 1°. A Bishop in his own diocese legitimately administers confirmation to all, even strangers, except for an express prohibition of their Ordinary. No positive consent, implicit or presumed, is required, as ancient canonists supposed, but only absence of opposition clearly manifested.

Outside of his own diocese a Bishop needs the at least reasonably presumed permission of the local Ordinary to give confirmation to others than

his own subjects. He may confirm his own subjects without that permission, but he must then do so privately and not use the pastoral staff or the mitre.

2°. A priest empowered by Apostolic Indult to administer confirmation in a certain territory may administer it to strangers also within the limits of that territory unless their Ordinary had expressly forbidden it. If he had a personal, not local, Indult he could confirm only his subjects.

This canon speaks only of priests who act by virtue of an Indult, not of those who, like Prefects Apostolic, might possess the power by common law, but these have territorial or local faculties which they can, therefore, exercise in favor of strangers but which they can not use outside of their territory, as said before. This last restriction applies also evidently to the faculties granted to priests by Indult.

55. 3. *Duty of the Minister.* 1°. A Bishop is bound to administer the sacrament of confirmation to those of his subjects who reasonably ask, and are prepared, for it. The time of the canonical visitation is particularly designated for the fulfilment of this obligation.

2°. Priests who have received from the Holy See the power of administering this sacrament have the same duty towards those persons for whose sake the faculty was granted.

3°. An Ordinary who has not the power of confirming, or whom legitimate causes prevent from exercising it, should take care as far as possible that the sacrament is administered to his subjects at least every five years. Under the present

law, therefore, an Ordinary who would neglect this duty for over five years would be guilty of grave negligence.

4°. In case of serious neglect in this matter on the part of an Ordinary, his Metropolitan should admonish and correct him, and if necessary report the disorder to the Holy See.

CHAPTER II

THE SUBJECT OF CONFIRMATION

(Can. 786-789.)

56. I. *Conditions for the Valid and Fruitful Reception of Confirmation.* (a) Only persons already baptized and never confirmed before can receive confirmation validly. All Christians can receive it, whether children or adults, actually enjoying the use of reason or deprived of it.

This sacrament can not be repeated; ancient texts which speak of renewal of the imposition of hands more likely refer to the rite of the reconciliation of heretics. (*Dictionnaire d'Archéologie*, l. c., col. 2540; Saltet, *Les Réordinations*, ch. 1, p. 22.)

An adult must have also some intention of receiving the sacrament; the Code does not mention this here as it does when treating of baptism, because fulfilment of this condition does not present the same difficulties, and in the case of an unconscious or insane person implicit habitual or interpretative intention, such as is contained in Christian life and profession, would suffice.

(b) The lawful and fruitful reception of confirmation supposes the state of grace, that is, baptismal grace preserved or regained by absolution or at least by perfect contrition.

An adult must, besides, have a sufficient knowledge of the Christian doctrine. Common law does not determine how far this knowledge must extend, leaving this to the prudent judgment of local Ordinaries.

57. 2. *Necessity*. Although confirmation is not in itself necessary for salvation, a Christian could not without sin neglect to receive it when opportunity offers itself. Some theologians pronounce this sin a grave one, and they quote in support of their teaching a decree of the Propaganda (May 4, 1774) and a declaration of Benedict XIV. (*Etsi Pastoralis*, May 22, 1742, § 3, n. 4.) But both the Congregation and the Pope had in view particular cases in which neglect implied and manifested contempt for the sacrament. The Code expresses the necessity of confirmation in the same words as the Propaganda, but abstains from affirming the gravity of the obligation.

Because of the great utility of this sacrament pastors are directed to take care that the faithful receive it in due time. For the same reason St. Thomas teaches that it should be administered to all who have the necessary dispositions, particularly to dying adults and children, in order that they may attain a higher degree of spiritual perfection and eternal happiness. (3^a pars, q. 72, a. 8.) The law permits the confirming of children in danger of death and this is done in Rome. In ordinary dioceses Bishops can not be bound to administer confirmation to dying children or

adults. (Lehmkuhl, n. 100.) As a remedy a canonist suggests that this power be delegated by the Holy See to archpriests or to deans. (Vermeersch, n. 66.)

58. 3. *Age.* 1°. In the early Church confirmation as a part of the ceremony of Christian initiation followed immediately solemn baptism, but in those days the candidates for baptism were generally adults. When in the fourth and fifth centuries the doctrine of original sin and consequently of the necessity of baptism for all became better known, the practice of infant baptism progressed rapidly; and as by that time, as a result of the organization of country parishes, the administration of baptism had devolved more habitually on priests, whilst Bishops, at least in the West, reserved to themselves confirmation, the two sacraments had frequently to be separated. Still for a long time it remained the custom to confer confirmation shortly after baptism. As late as the thirteenth century, English Councils enjoin on parents under pain of severe penalties to bring their children for confirmation within a year after their birth (Worcester, 1240) or within three years (Worcester, 1287). But the tendency which these Synods so strongly resisted had already prevailed in other countries. A Council of Cologne in 1280 fixed the age of seven as the normal time for confirmation. Other Councils in Italy and in France soon adopted the same rule. The Council of Narbonne in 1609 forbids the confirmation of children before the age of seven and advises waiting for the "perfect age," that is, twelve or fourteen. The Catechism of the Council of Trent says that whilst the sacra-

ment of confirmation may be administered to all as soon as they have been baptized, its administration is nevertheless inexpedient till children have the use of reason; if not postponed to the age of twelve it should be deferred at least until that of seven.

The Greek Church continued to administer confirmation immediately or shortly after baptism, but the Latin Church, except in Spain and Spanish-speaking countries, which retained the old discipline, adopted as a general rule the deferring of the confirmation of children till they reached the age of reason.

2°. The present law, without imposing it formally as an obligation, declares it quite proper to conform to the custom of the Latin Church and confirm children about the age of seven, but it adds that the sacrament of confirmation may be administered at an earlier age either by reason of danger of death or for any other cause which the minister will deem grave and just. It does not positively state that the delay may be prolonged much beyond the seventh year, but rather implies the contrary.

CHAPTER III

TIME AND PLACE FOR THE ADMINISTRATION OF CONFIRMATION

(Can. 790-792.)

59. 1. *Time.* During the first centuries of the Church the regular time for confirmation as for baptism was the Easter and Pentecost season.

Under the present discipline it may be administered any day of the year, although Pentecost week remains a particularly appropriate time for it.

The Roman Pontifical supposes that it is received fasting and consequently in the morning, but the contrary custom has prevailed in many places, and the Code does not in any way condemn or discourage it.

2. *Place.* In the most ancient descriptions of the ceremony of confirmation, as found, for example, in the Canons of Hippolytus or the Egyptian Constitution, we see the neophytes on coming out of the baptismal waters taken to the church and to the *consignatorium* for the laying on of hands and the anointing with chrism by the Bishop.

The church is still the proper place for the administration of confirmation, but for any cause which the minister considers just and reasonable any other decent place may also be used for that purpose, a private chapel, the sacristy, or even a private house.

Within his own territory a Bishop has the right to administer confirmation also in places which enjoy the privilege of exemption.

CHAPTER IV

SPONSORS

(Can. 793-797.)

60. 1. *Necessity.* The custom of employing sponsors at confirmation as at baptism is very

ancient in the Church and had obtained force of law. The Second Plenary Council of Baltimore in 1866, with the approval or at the request of the Congregation of the Propaganda, directed the Bishops of the United States to establish it as soon as possible where it did not exist. (N. 253.)

The Code, renewing the prescriptions of the Pontifical, enjoins observance of the old tradition whenever possible. Impossibility, however, of having a sponsor would not, as clearly implied, prevent administration of confirmation.

2. *Number.* Each sponsor should stand for only one or two candidates, unless the minister permits departure from this rule for a just cause. The ancient discipline allowed exceptions only in cases of necessity. (H. O., June 16, 1884.)

Each candidate should have only one sponsor.

3. *Conditions for Sponsorship.* To act validly as sponsor at confirmation one must:

(a) Be confirmed, have the use of reason, and intend to assume the office of sponsor.

(b) Not belong to any heretical or schismatic sect, not be excommunicated by condemnatory or declaratory sentence, nor be infamous by law, or excluded from the legitimate legal acts, or, if a cleric, not be deposed or degraded.

(c) Not be the father, mother, or spouse of the candidate.

(d) Be designated for the office by the candidate, his parents or guardians, or should they fail or refuse to do so, by the minister or pastor.

(e) Physically touch the candidate at the moment of the confirmation, either personally or by proxy. According to present usage the sponsor

places his right hand on the shoulder of the godchild; the Pontifical supposed that he placed the right foot on the foot of the candidate.

61. 4. *Requisites for Lawful Sponsorship.* For the licitness of the act the sponsor at confirmation:

(a) Must be different from the one who stood at baptism, unless the minister judge that there is a reasonable cause for admitting the same or unless confirmation be administered immediately after baptism.

(b) Regularly he should be of the same sex as the candidate, but the Code allows the minister to admit one of the other sex in particular cases for a reasonable cause.

(c) He must, besides, fulfill all the other conditions demanded for lawful admission to sponsorship at baptism. (Can. 766.)

5. *Duties of Sponsors.* Valid confirmation gives rise to a spiritual relationship between the confirmed person and the sponsor. The latter contracts the obligation, explicitly affirmed by the Code, of considering the godchild as permanently placed under his special care and of providing for his Christian education if necessary.

CHAPTER V

RECORD AND PROOF OF CONFIRMATION

(Can. 798-800.)

62. 1. *Record.* The pastor ought to enter in the confirmation record, which every parish must have

(Can. 470), the names of the minister, of the recipients, their parents and sponsors, and the date and place of confirmation. He must also make a note of this in the baptismal record.

If the pastor of the person confirmed was not present the minister should notify him as soon as possible, personally or through another.

2. *Proof.* For the proof of confirmation when no one else's rights or interests are at stake the testimony of one altogether trustworthy witness or the sworn statement of the person confirmed as an adult will suffice.

TITLE III

THE HOLY EUCHARIST

(Can. 801-869.)

(Gasparri, *Tractatus Canonicus de Sanctissima Eucharistia*, Paris, 1897; Many, S.S., *Prælectiones de Missa*, Paris, 1903; Wernz, III, 524-557; 738-745; Martène, o. c., l. i. c. 3-5; Cappello, n. 548; Vermeersch, n. 73; Blat, p. 94.)

NATURE OF THE HOLY EUCHARIST

63. In a preliminary canon, as a foundation for what follows, the Code sums up the dogmatic teaching of the Church on the Holy Eucharist, the Real Presence, the Sacrifice of the Mass, and Holy Communion: In the Most Holy Eucharist, under the species of bread and wine, Christ the Lord Himself is contained, offered, and received.

The legislation pertaining to the mystery of the Real Presence and the homages to be paid to Our Lord residing in the Tabernacle has its logical place in that part of this third book which deals with divine worship. Here we consider the Holy Eucharist only as a sacrifice and as a sacrament, and treat in two distinct chapters of Holy Mass and of Holy Communion.

CHAPTER I

THE HOLY SACRIFICE OF THE MASS

(Can. 802-844.)

Leaving to theologians the questions of the institution, essence, and effects of Holy Mass, the legislator here lays down canonical rules regarding the minister of the sacrifice, its rites and ceremonies, the time and place of its celebration, and Mass stipends.

ARTICLE I

THE PRIEST WHO OFFERS THE SACRIFICE

(Can. 802-813.)

The enactments that concern the minister pertain to his power, the mode of its exercise, the internal and external dispositions it supposes, the attendants permitted or required.

I. POWER OF OFFERING THE HOLY SACRIFICE

64. To offer the Holy Sacrifice a certain power of Order is necessary; priests alone, to the exclusion of deacons, inferior clerics, and laity, possess it.

They offer the sacrifice as ministers of Christ, Who remains the only principal priest, and of the Church, who by ordination deputed them to act in her name. In a sense the faithful offer it also and actively coöperate with them by joining in the

liturgical prayer and contributing in various ways to the celebration of Mass, but the real sacrificial power left by Our Lord to the Church, His mystical body, for the sake of all its members, resides in the priests as the specific organs chosen to exercise it.

Christian tradition has always connected the Eucharistic Sacrifice with the priesthood, from the days of St. Justin (Apol. I, 65), St. Ignatius (Ad Smyrnenses, viii), and St. Cyprian (Epist. iv. v) to the present time. The Council of Nicæa (425, Can. 18) rebukes deacons who presumed to distribute the Eucharist to priests, because, it says, it is contrary to canons and to custom to have the body of Christ distributed to those who offer the sacrifice by those who can not offer it.

This power is transmitted by ordination and is inamissible. Unworthiness, heresy, or schism do not affect it; suspension, excommunication, and degradation do not take it away.

II. RULES FOR ITS EXERCISE (Can. 803-806.)

65. 1. *Concelebration*. 1°. Ecclesiastical writers have used this term to designate the active participation of several persons, clergy and laity, in liturgical functions and more particularly the coöperation of several sacred ministers in the administration of sacraments or the performance of other religious ceremonies. We have some traces of this form of concelebration in the ordination of priests with the general imposition of hands and in the consecration of the holy oils on Maundy Thursday.

Since the twelfth century theologians have re-

served the name to the celebration of the sacrifice of the Mass by several priests consecrating together the same bread and wine.

2°. In the early Church the Holy Eucharist was usually celebrated by the Bishop or in his absence the first member of his presbyterium. The other priests celebrated with him, the deacons and inferior clerics ministered to them, each one in his own rank, and the whole community who had supplied the matter of the sacrifice assisted and joined in the common prayers.

Ancient Fathers see in this close association of the Christian people with their clergy and of the clergy with one another and with their Bishop in the divine service a symbol and pledge of that unity which they prized so highly. "As the Lord has not done anything without the Father, writes St. Ignatius Martyr, so you should not do anything without the Bishop and the priests; nothing is good but what we do in common: one prayer, one supplication, one and the same spirit." (Ad Magnesios, c. vii; Ad Smyrnæos, c. viii.)

According to an old tradition still observed in the Orient, each church had only one altar and one service a day, at which all assisted, clergy and people. As a mark of esteem and brotherly love when Bishops received illustrious visitors, they would invite them to celebrate together the solemn Mass, as we read of Pope Anicetus on the occasion of St. Polycarp's visit and of St. Gregory the Great, when legates from Constantinople came to Rome.

66. 3°. A decree attributed to Pope Zephyrinus (198-207) implies that at a very early date, if not from the beginning, the priests of the Roman

Church who had charge of the twenty-five *tituli* established in the city, assisted at the stationary Masses celebrated by the Pope and celebrated with him. The letter of St. Innocent I to Becentius, Bishop of Gubio, shows that the practice still existed in the fifth century (417; Migne, P. L., vol. 20, col. 556), except that on Sunday the priests, being detained in their churches, could not celebrate with the Pope; but in order that they might not think themselves separated from his communion on that day he sent to them the *frumentum*. He did not send it to priests who presided over the churches outside of the city because these, on account of the distance, are authorized, he says, to celebrate by themselves on Sundays.

In the eighth century the solemn functions when the Pope celebrated Mass together with the Cardinal priests had become rarer and reserved for the principal feasts of the year, but Pope Innocent III still refers to them in the beginning of the thirteenth century. By the end of the fourteenth they had practically been abandoned entirely.

67. 4°. The rite of concelebration, which according to Martène had existed for about thirteen hundred years in both the Oriental and the Occidental Church, thus almost disappeared from the Roman liturgy, which retained it only for the ordination of priests and the consecration of Bishops.

Solitary Masses or Masses celebrated by individual priests, which in the beginning seem to have been rare exceptions, had become more and more frequent and then the universal practice.

Some theologians went even so far at this time as to question the legitimacy or validity of concelebration.

Historians assign various causes for this change in the practice of the Church: the weakening of popular piety, which preferred short private Masses to longer solemn services, increased demand for Masses offered for special intentions. Cardinal Bona mentions as one of the chief causes the great development and influence of Mendicant Orders, the extension of the privilege of exemption from episcopal jurisdiction, the multiplication of places of public worship in which the faithful could go for the Sunday Mass (*Rerum Liturgicarum*, l. i, c. 18, § 9) outside of parish and cathedral churches. Others attribute great influence to the teaching of theologians of this period and to the condition of the secular clergy and ancient Orders at this time which caused the people to turn away from their regular pastors and desert the services in which the unity of the Christian community found its expression. (Martène, l. c., c. 3, art. 8; *Dictionnaire d'Archéologie*, Concelebration; Cappello. l. c., n. 316; Duchesne, *Christian Worship*, c. vi; *Ephemerides Liturgicæ*, March, Ap., May, Oct., Nov., 1923; *Les Questions Liturgiques et Paroissiales*, Dec. 1922, p. 275; Feb. 1923, p. 23-34.)

5°. The Code, sanctioning the discipline that had prevailed in the Latin Church for several centuries, forbids concelebration except in the ordination of priests and the consecration of Bishops.

68. 2. *Mass of Visiting Priests and "Celebret."* (Can. 804.) 1°. The Council of Arles (314, Can. 19) declared that a visiting Bishop should

be allowed to offer the Holy Sacrifice and a Council of Carthage demanded likewise that a Bishop and priest visiting a church be received with all the honor due to their rank and invited to preach and consecrate the oblation.

These Synods thereby gave force of law to a long existing tradition. The clergy of the ancient Church, like Christians generally, had been accustomed to observe the laws of the most generous hospitality; they treated one another with great reverence and charity, and one of the chief marks of respect shown to one of the brethren who visited them was to invite him to officiate and celebrate the Holy Eucharist.

But these honors were not paid to strangers unless they could give proof of their orthodoxy and worthiness. The Council of Chalcedon (451, Can. 13) explicitly forbade the admittance of unknown clerics to participation in the divine services if they did not possess commendatory letters from their Bishop. Seven centuries later Innocent III gave the same rule to the Patriarch of Jerusalem, who had consulted him on this subject, adding, however, that if a clergyman desired to say Mass privately and out of devotion he might be allowed to do so even though he was not known and possessed no credentials. (3, X, I, 21.)

69. 2°. The present law contains practically the same provision. (a) A priest who wishes to say Mass in a church not his own should have commendatory letters vouching for his ordination and good standing. Secular priests obtain these from their Ordinary, Religious from their superiors, priests belonging to an Oriental rite from the

Congregation for the Affairs of the Oriental Churches. With these credentials duly authenticated with signature and seal and still valid a priest is entitled to the privilege of celebrating the Holy Sacrifice except for some well-ascertained offence committed in the mean time and which would debar him from it.

(b) Even when the visiting priest has no commendatory letters or "celebret" the rector who would know him as worthy of the favor might allow him to say Mass; but this would be a purely benevolent concession, not an obligation.

(c) If the rector does not know the visitor he may still give him the permission to celebrate once or twice, provided he wears the ecclesiastical dress, accepts nothing under any pretext from the church in which he says Mass, and enters his name, office, and diocese in the book specially kept for that purpose.

(d) Diocesan statutes may complete these regulations of the Code but not contradict or annul them. They can not, for example, take away from the rector of the church the right here given him by the common law to admit priests to the celebration of the divine mysteries without "celebret" under certain circumstances; they may demand that strangers officiating in the church sign their names in a special register and prescribe some formalities to ascertain the authenticity of the commendatory letters. (Cappello, l. c., n. 7737.) All are bound by these diocesan rules, even Religious, except when they celebrate in a church of their own Order.

(e) Regularly rectors of churches should not exact any compensation for the privilege of say-

ing Mass, the use of the sacred vestments and utensils, nor for the candles and bread and wine. If, however, the church is very poor, particularly if the visitors would be numerous, the Ordinary may permit asking a moderate fee from priests who say Mass there for their own convenience. The Bishop should fix the amount of the offering and no one, not even exempt Religious, may demand more. (Can. 1303.) This applies to the Masses of occasional visitors; for habitual celebration a special arrangement would be necessary.

70. 3. *Obligation of Saying Mass.* (Can. 805.)

1°. All priests are bound by reason of their character and independently of any other consideration to offer the Holy Sacrifice several times a year; how often, the legislator does not define with greater precision. Theologians generally say three or four times a year.

St. Thomas, Suarez, St. Alphonsus, and many others consider this obligation as one of the divine right resulting from the institution of the priesthood and the words of the Saviour: "Do this for a commemoration of Me." On the other hand, St. Bonaventure interprets the command of Our Lord as addressed to the Church as a body, not to individual priests. Theologians who follow him conclude that the obligation of celebrating several times a year exists only by ecclesiastical legislation introduced gradually in modern times and now explicitly sanctioned by the Code. They quote in support of their view the example of St. Jerome, who did not exercise his priestly powers, and of St. Ignatius, who did not say Mass for a whole year after his ordination (Cappello,

n. 632; Vermeersch, n. 77), also the silence of Innocent III who, whilst complaining of the negligence of Prelates who celebrated Mass hardly four times a year, does not declare them guilty of disobedience to law. (9, X, III, 41.)

2°. It is, however, if not the command, certainly the wish of the Church, interpreter of Christ's will, that priests should offer the Holy Sacrifice often and even daily. This frequent celebration is urged as strongly as it can be short of a positive precept when the law directs Bishops and superiors in Religious Orders to take care that their subjects celebrate the divine mysteries at least on Sundays and feast-days of obligation.

71. 4. *Celebration of Several Masses on the Same Day.* (Can. 806.) 1°. In the beginning Mass was celebrated only once a week, then three or four times, and finally, in the fifth or sixth century, every day.

These were solemn Masses and regularly each church had only one public service the same day. When, however, Christians having grown more numerous, the basilicas proved insufficient to accommodate the whole congregation, St. Leo I approved of several services. For that and other reasons it became the custom in Rome and various places to celebrate several Masses on great feast-days, particularly those which had a solemn vigil and a night office. Writers speak of two Masses celebrated on Holy Thursday, one for those who fasted and one for those who did not (St. Aug., Epist. 54); of at least two on Easter and Pentecost, and of three on the feast of St. John the Baptist and on Christmas day.

Usually the Bishop himself celebrated the two

or three services. Priests imitated this example in their private devotions and thus, according to Walafrid Strabo, a writer of the eleventh century, was introduced the practice of saying several Masses a day. In his time, he says, some priests celebrated the divine mysteries once a day, others two or three times, or even more. Pope St. Leo II (795-816) often said as many as seven or nine Masses the same day. (*De Rebus Ecclesiasticis*, c. 21; Migne, P. L., T. 114, col. 943.) In the visitation of the diocese the Bishop had to inquire, according to Regino of Prum (d. 915), whether the parish priest said Mass at the regular time, about nine o'clock, and remained fasting till twelve, so that he might say another for the benefit of travelers or visitors if needed. (*De Ecclesiasticis Disciplinis, Inquisitio*, n. 33, P. L., T. 132, col. 188.)

This frequent repetition of the sacred mysteries having given occasion to abuses and to suspicions of avarice or simony, Synods of the tenth century forbade priests to celebrate more than three Masses a day. A little later Pope Alexander II (1061-1073) asks them to be satisfied with saying one unless they wish to say two, one for the living and another for the dead (53, D, I, de Cons.); finally Innocent III and Honorius III positively restricted them to one (3, 12, X, 41) except on Christmas day and in cases of necessity. (Many, l. c., c. iii; Martène, c. iii, art. 3; Thomas-sin, *Ancienne et Nouvelle Discipline de l'Eglise*, P. III, l. I, c. 72 n. 6; Gasparri, n. 375.)

72. 2°. Under the present law the celebration of more than one Mass a day remains forbidden except on Christmas and All Souls' day and when

authorized by Papal Indult or by the local Ordinary in cases of necessity.

(a) Christmas Masses. The practice of offering the Holy Sacrifice three times on Christmas day goes as far back at least as the time of St. Gregory the Great, who refers to it in his homily on the gospel of the feast. The Popes of the thirteenth century maintained it unchanged, as does the present legislator. On that day, therefore, every priest of the Latin Church may say three Masses, although he is not bound to do so.

If he says only one, he should among the three choose the one which corresponds best to the moment of the celebration according to the prescriptions of the rubrics.

He may apply the Masses for special intentions and accept a stipend for every one of them, unless he has to offer one *pro populo*, according to the ancient custom, which was not modified by modern legislation.

By decree of the Congregation of Rites, approved by the Pope (Jan. 26, 1920, A. A. S., p. 122), a priest allowed by Indult to say every day the votive Mass of the Blessed Virgin or some other may say the same three times on Christmas day. He might also say three times one of the Masses of the feast.

73. (b) All Souls' Day Masses. (i) In the ancient kingdom of Aragon, which then included the provinces of Catalonia, Valencia, Majorca, and Roussillon, by a custom several centuries old, secular priests celebrated two Masses and regulars three on the day of the Solemn Commemoration of All Souls.

At the request of Kings Ferdinand VI of Spain

and John V of Portugal, Benedict XIV granted to every priest, secular or regular, residing in the territory subject to either prince, both in the New and in the Old World, the faculty of celebrating three Masses on the second of November or on the next day in case of transfer of the Commemoration of All Souls. (*Quod Expensis*, Aug. 26, 1748.)

(ii) In 1915 Pope Benedict XV extended the privilege to all the priests of the Latin Church. They all have permission, without any obligation, however, of saying three Masses on All Souls' day. The new Missal gives the rubrics which govern these three Masses.

The priest may apply one of them, whichever he chooses, for any person he wishes and receive a stipend for it. He should not directly or indirectly demand more than the usual stipend as fixed for other Masses by custom or diocesan law, but he may accept free and spontaneous offerings. (S. C. C., Oct. 15, 1915.) He might accept also a compensation for extrinsic extraordinary labor. (Com. Int., Dec. 13, 1923; A. A. S. 1924, p. 116.)

The other two Masses must be applied one for all the faithful departed and one, if three are said, according to the intention of the Sovereign Pontiff. For these the priest may not accept any stipend, not even, according to the decree of Oct. 15, 1915, a compensation for extraordinary labor. Nor may he apply the second or third Mass for a special intention with stipend and offer on another day the Mass for all the faithful departed and the Mass according to the intention of the Pope.

Priests who have permission to say every day

the *Missa Quotidiana pro Defunctis* may say it three times on All Souls' day. (Jan. 26, 1920.)

74. (c) *Bination with permission of the local Ordinary in cases of necessity or by Papal Indult.*

Innocent III had decreed that except in cases of necessity it should suffice for priests to celebrate once a day. Canonists commonly interpreted his words as containing a real prohibition and allowing exceptions only for reasons of true necessity, not of mere utility or individual convenience. That necessity existed according to them when on a Sunday or feast-day of obligation, one priest only being available, two Masses were needed to enable the people to fulfill their duty because either the same pastor had under his care two parishes so separated from each other that the faithful belonging to one could not on account of the distance or condition of roads repair to the church of the other for Mass, or in the same parish the people were so scattered that they could not meet in one and the same place, or the church was too small to accommodate the whole congregation. They did not admit as reasons of necessity the poverty of the priest, the desire of having a Mass in a domestic chapel or for a suppressed feast.

They generally held also that even when a real necessity existed priests needed the permission of the Ordinary, and moreover that the latter had no authority to allow the celebration of more than two Masses even for very grave reasons. (Gasparri, l. c., n. 378-393; Many, n. 29-35.)

75. The present law confirms the interpretation of the old one commonly received among canonists.

(i) It does not directly grant to priests the permission of celebrating two Masses in cases of necessity, but obliges them to obtain it from the local Ordinary or from the Holy See. In urgent cases it might probably be presumed, but custom could not habitually dispense from it.

(ii) Ordinaries receive formal authorization to grant it, but only on certain well-defined conditions, *viz.* when they prudently judge that for lack of priests a notable portion of the faithful could not otherwise assist at Mass on a day of obligation.

(iii) They may not, therefore, make the concession for a week-day, nor a suppressed feast, even though celebrated with a great concourse of people, nor to satisfy the piety of a few persons, or when another priest can say the needed Mass. But when the other conditions are fulfilled they may permit the two Masses in a public or semi-public chapel as well as in a church.

(iv) Canonists generally consider as a notable portion of a community twenty or thirty persons. In one case the Congregation of the Council approved of bination to supply with Mass a group of about twenty persons who lived a mile from the main church; in another case the Propaganda left it to the charity and conscience of the Vicar Apostolic to permit a second Mass for the benefit of ten or fifteen slaves. (Putzer, *Commentarium in Facultates Apostolicas*, n. 159; Gasparri, n. 387-389.)

(v) In appreciating the difficulty which would prevent a notable portion of the people from hearing Mass, account must be taken not only of objective conditions, but also of the subjective

dispositions of persons who, even though they could, yet would not attend Mass unless greater facilities were offered them. (Cappello, n. 732.) Custom may likewise justify somewhat greater leniency in the application of these rules. Formerly Bishops had special faculties to authorize binating for less serious reasons than required by the common law, but at present those faculties are not included in the ordinary formulæ.

(vi) As expressly declared, Ordinaries have no power to permit the celebration of more than two Masses, and this should be understood even of cases of very grave necessity. (Cappello, n. 739.) For this recourse should be had to the Holy See, which can and does occasionally give permission to say three Masses on account of very special circumstances, as existed in some places during the war and have existed in certain dioceses of Mexico.

The Holy See has also sometimes authorized bination on days of special devotion or for the benefit of Religious Communities.

(vii) Permission of binating is local, not personal, and may be used by any priest who ministers to the community for whose sake it was granted.

III. DISPOSITIONS FOR MASS. (Can. 807, 808.)

76. 1. Purity of Soul. 1°. Confession before Mass. The celebration of the Holy Sacrifice requires the state of grace; an act of perfect contrition suffices to recover it after sin but, by positive law, this does not suffice as a preparation for Mass or Communion. A priest conscious of having committed a grave sin since his last absolu-

tion must, before ascending the altar, receive the sacrament of penance even if he felt certain of his sorrow. "He who would communicate," says the Council of Trent, "ought to recall to mind the precept of the Apostle: Let a man prove himself" (I. Cor. vi, 29); now ecclesiastical usage declares that necessary proof to be, that no one approach the Sacred Eucharist, when conscious of mortal sin, without previous sacramental confession, how contrite soever he may seem to himself. This the Holy Synod decreed to be binding on all Christians and also on priests who celebrate, provided the opportunity of a confessor does not fail them; but if in any urgent necessity they should celebrate without confession they ought to confess as soon as possible. (Sess. XIII, c. 7.)

From these words of the Council many canonists conclude that this obligation of confession before Mass or Holy Communion is one of divine law implicitly promulgated by St. Paul (Gasparri, l. c., n. 442); others, however, see in this an ecclesiastical ordinance intended to secure respect for the Holy Eucharist. The Council says (Sess. XIII, Can. 11): "For fear lest so great a sacrament may be received unworthily, the Holy Synod declares that sacramental confession, when a confessor may be had, ought to be made beforehand by those whose conscience is burthened with mortal sin, how contrite soever they may think themselves."

As commonly admitted now, the law does not apply to a person who, after receiving absolution, would remember a mortal sin involuntarily forgotten, nor probably to one who would only doubt whether he is in sin or not.

77. 2°. Exception. The Code, like the Council of Trent, admits that if a priest had to say Mass for some urgent reason and yet could not without grave inconvenience go to confession, he might be satisfied with making an act of perfect contrition, but he should go to confession as soon as possible afterwards.

(a) The urgent reason exists if a priest has to celebrate Mass for his people on a day of obligation; if he has promised a Mass for a certain occasion, such as a funeral service, a marriage, etc.; if for any other cause he can not abstain from saying Mass without giving scandal or exposing himself to unfavorable suspicions or criticisms; if he has to consecrate to give Holy Communion to sick or dying persons or to any persons in serious need of the sacrament.

(b) The opportunity of receiving the sacrament of penance is wanting if there is no priest present who can give absolution and it is impossible or really difficult to go to one who can, because of the distance or want of time, pressing occupations, condition of health, or other causes. Some ancient authors considered as constituting a serious obstacle a distance of ten or even five miles if one had to walk, but much depends on circumstances, the condition of the roads and of the weather, the facilities of communication, etc.

The difficulty preventing one from going to confession must be extrinsic to the sacrament; hence many canonists and theologians refuse to accept as a valid excuse the repugnance experienced in confessing to a certain priest. (Gasparri, l. c., n. 446; Lehmkuhl, *Theologia Moralis*, II, n. 151.)

Some, however, would consider as, in some measure at least, extrinsic to the sacrament the exceptionally strong and practically insuperable repugnance experienced because of special circumstances, as might occur if an aged ecclesiastic had to confess a very humiliating fall to a close relation, a nephew or a brother, or to a young priest with whom he lives in terms of intimate friendship. (Cappello, n. 490; Vermeersch, n. 79; Noldin, *De Sacramentis*, n. 146; Genicot, *Theol. Mor.*, II, n. 193; Berardi, *Praxis Confessarii*, III, n. 479.)

Noldin would not, on this ground, excuse a pastor from confessing to his young assistant; Genicot would, not ordinarily, but by way of exception in cases of unusual difficulty due to the special nature of the relations between them. (*Casus Conscientiæ*, II, p. 214.) Berardi, who favors this view, finds modern theologians more severe on this question than ancient ones and unnecessarily so, as he does not see any reason to fear dangers of abuses from a lenient interpretation of the law, since cases of this kind must be rare and the obligation remains of making the confession omitted within a short time.

(c) The law demands that this confession be made as soon as possible, which canonists interpret within two or three days, and always before saying Mass again unless the impossibility of doing so would still exist.

78. 2. *Fasting.* (Can. 808.) 1°. Ancient Discipline. Whether, following the example of Christ, the Apostles and first Christians celebrated the Holy Eucharist in connection with a common meal called *agape*, how long and under

what conditions this connection continued if it ever existed, does not appear clearly from the texts. (*Dictionnaire d'Archéologie*, Agape; P. Batiffol, *Etudes d'Histoire et de Théologie Positive*, L'Agape, Paris, 1902; J. F. Keating, *The Agape and the Eucharist in the Early Church*, London, 1901.)

The practice of fasting before Holy Communion had certainly prevailed, at least in the African Church, before the end of the second century. (Tertullian, *Ad Uxorem*, lib. ii, c. 5.) It became a written law in the third as far as priests were concerned. The Councils of Hippo (393, Can. 28) and Carthage (397, Can. 29) forbid them to celebrate the sacred mysteries except fasting. A little later the Councils of Braga (572, Can. 10) and Toledo (646, Can. 2) in Spain and of Auxerre (578, Can. 19) and Macon (585, Can. 6) in France have similar prohibitions and threaten the disobedient with suspension or deposition.

In some places it remained customary for a time to celebrate the Holy Sacrifice in the evening on Holy Thursday and dispense from the law of fasting. Gradually the practice fell into disuse; the Councils of Braga (563, Can. 16) in the West and of Trullo (692, Can. 29) in the East abolished it and all traces of it had disappeared by the end of the ninth century. The same Synods condemned as an abuse the custom existing in certain districts of having Masses celebrated for the deceased immediately after their death even in the evening and by priests who had broken their fast.

Thus both in the East and the West the law of fasting had come to apply to all Masses; excep-

tions were permitted only in cases of urgent necessity. (Constance, sess. XIII, June 15, 1415; Many, l. c., c. iv.)

79. 2°. Present Law. Confirming a discipline universally in force for several centuries, the Code pronounces it unlawful for a priest to celebrate Mass unless he has observed the natural fast from midnight.

(a) Time is reckoned physically not morally; the obligation of abstaining from food begins exactly at midnight, at the first stroke of the clock according to some, at the last according to others, not one second later.

The law permits here following the local time, mean or true, or the legal time, regional or extraordinary (Can. 33), and to depend on any clock which is probably correct. In case of doubt, whether or not he has taken anything after midnight, a priest is not obliged to abstain from saying Mass.

(b) Any kind of food or drink, even if taken in the smallest quantity, breaks the natural or Eucharistic fast, but it must surely have the nature of digestive food or drink and be taken as such, entering the mouth *ab extrinseco* and penetrating into the stomach, *per modum cibi et potus*, not by way of saliva or breathing.

A person does not break his fast if he swallows blood from the gums or particles of food which had remained between the teeth from the previous evening meal; nor if, when washing his mouth, a drop of water becomes mixed with the saliva and passes into the stomach.

Inhaling a flake of snow or a drop of rain, or a small fly, smoking, snuffing, or chewing tobacco

do not constitute a violation of this law, or injections although intended to nourish the body, nor probably washing the stomach by means of a gastric pump. (Cappello, n. 502; Many, l. c., n. 176.)

80. 3°. Exceptions. Only urgent necessity or dispensation by the legitimate superior can excuse from the Eucharistic fast.

(a) Urgent necessity exists when the sacrifice has to be completed. Thus if a priest would fall sick after the consecration, another would have to continue the Mass even though he would not be fasting; or if a priest realized after the consecration that he had broken his fast he should go on all the same; should he become aware of his condition before the consecration he would have to leave the altar if he could do so without danger of scandal or loss of good name. Likewise if a priest found out at the communion that for want of proper matter or for some other cause the consecration of one of the species was invalid, he should consecrate and communicate again. If after taking the ablutions he noticed some small fragments of the Host on the corporal or paten he should consume them even though he had left the altar already, provided he had not put off the sacred vestments.

According to some canonists, the necessity of administering Holy Viaticum would excuse from the law of fasting.

Canonists do not admit as a valid excuse the fact that the faithful would otherwise miss Mass on a Sunday.

The well-grounded fear of serious scandal, loss of good name, great dissatisfaction among the

people, or other grave inconvenience would constitute such an excuse; but some canonists do not believe that there will often be cause for that fear, as people can readily understand why a priest does not celebrate after breaking the fast through oversight or by mistake. (Gasparri, n. 435; Many, n. 180.) The Holy Office declared, Dec. 2, 1874, that the fear of causing scandal or surprise would never justify a priest in saying a second Mass if he had broken the fast after the first. (Coll., n. 793.)

Several authors give as an example of serious inconvenience excusing from this law the case of a newly-ordained priest who would accidentally break his fast on the day appointed for the solemn celebration of his first Mass, when friends have gathered and important preparations have been made for the occasion. (Cappello, n. 512.)

It always required a graver reason to excuse from fasting before Mass than before Holy Communion. The law binds the priest as minister of the sacrifice when it might not bind him as recipient of the sacrament.

81. (b) Dispensation. The Holy Office alone is competent to dispense priests as ministers of the sacrifice from the Eucharistic fast. (Can. 247 § 5.) In the past it granted these dispensations only rarely, for very grave causes and usually to Bishops who had to celebrate pontifically at a late hour; but by letter of March 22, 1923, departing from the former severity, it invited all local Ordinaries to apply for them whenever priests who had to say two Masses or one late Mass on Sundays could not observe the strict natural fast without grave inconvenience. (A.

A. S., 1923, p. 151; *Il Monitore Ecclesiastico*, Maggio 1923, p. 29; Ott., p. 305; *Nouvelle Revue Théologique*, Juin 1923, p. 319; *Periodica de Re Canonica et Morali*, 1 Mai 1923, p. 29.)

(i) The law of the Eucharistic fast remains unchanged both in itself and in its interpretation; the Church will continue, the Holy Office declares, to maintain it with the same care as before, but she does not wish that the respect shown to the real body of Christ should turn to the detriment of His mystical body, the souls. Now at the present time priests are often burthened with heavy duties on Sundays, many have to say a late Mass or two Masses and this not infrequently in distinct, distant places, difficult of access; for them the Congregation has decided, in certain cases and under very definite conditions, in some measure to mitigate the law of fasting, not by modifying it, but by means of opportune dispensations.

82. (ii) The mitigation and dispensations will consist essentially in permission to take before Mass some liquid food such as coffee, milk, broth, even though it would have some solid elements mixed with it like wheat-meal, ground toast, as long as the liquid form remains. (H. O., Sept. 7, 1879.) The Congregation positively excludes all intoxicating liquors in any quantity.

(iii) In these concessions the Holy Office, as explicitly stated, has in view the common good of souls, not the personal interests, spiritual or temporal, of the priest. Hence the dispensations will suppose on the one hand a real need of a late Mass or of two Masses by the same priest, that the people may fulfill their duty on a day of obli-

gation, on the other hand the impossibility for the priest to observe the natural fast without serious inconvenience either because of poor health, or of heavy work, or for some other grave reason. Canonists mention as serious inconveniences a severe headache, great fatigue, the necessity of abstaining from any useful work and losing the whole forenoon, or of rising regularly at a late hour and forming habits detrimental to intellectual and spiritual life. The particular Indults will determine more in detail these conditions.

83. (iv) By the letter of March 22, 1923, the Holy Office did not grant dispensations; the Ordinaries had to present the cases with all their circumstances, then the Congregation would dispense either directly and in each case, which does not mean, however, for each Mass, or through the Ordinaries, to whom, when deemed necessary, it would give habitual faculties for this. In urgent cases, when time did not permit recourse to the Holy See, they were personally authorized to dispense and notify Rome as soon as possible, always taking care to remove all occasion of scandal.

For late Masses, at least in the beginning, the Congregation adopted the practice of dispensing directly, in individual cases and only under well-defined, rather strict conditions. For cases of bination it granted habitual faculties to Ordinaries. According to the printed form, they are to use them only in favor of priests who have charge of souls and must say a second Mass outside of their parish church, in a distant place, on days of obligation. (Monitore, l. c., p. 306.)

For all who binate the dispensation implies permission to take the ablutions at the first Mass. (H. O., Nov. 16, 1923.)

IV. APPLICATION OF THE MASS. (Can. 809.)

84. 1. *General Principles.* The sacrifice of the Mass possesses essentially the same efficacy as that of the cross. By His immolation on Calvary Christ merited for Himself the exaltation of His sacred humanity (Phil., ii, 9) and for the whole human race redemption from sin. But clearly some men profit more than others by the merits of the Saviour of all or have a larger share in them. In like manner the sacrifice of the Mass sanctifies first the priest who offers it, then all the members of the Church and especially some of them.

Now, as we know from the practice and teaching of the Church, consistently with His mode of action in the distribution of His grace, Christ has left to those whom He has constituted dispensers of God's mysteries the special application of the fruits of the Mass or the application of what theologians call the special, in contradistinction to the most special or general, fruits which go to the priest or to all the faithful respectively.

To whom may priests make this application?

85. 2. *Practical Rule.* The Code declares priests free to apply Holy Mass for any living person, with some restrictions in regard to those under excommunication, and for any of the souls expiating their sins in purgatory.

1°. For the Living. The efficacy of the Holy Sacrifice extends to all men capable of redemption and further sanctification, *i. e.*, to all men on earth

still in the state of probation; for all of them the priest can always offer it validly, but for some the Church may forbid or restrict this application. She has done so in the past, not so much by general legislation as by particular decrees issued in view of special circumstances and for the solution of individual cases. Hence the relative severity of some of them and apparent contradictions between them.

The Code, in the canon which now governs this matter, permits the application of Mass to all the living, except that to persons under excommunication it may be applied only privately and avoiding all occasions of scandal, and if they are *vitandi*, it may be applied only for their conversion.

(a) To remain private the application should not be announced publicly, nor should the Mass be celebrated with special solemnity. The priest may promise it and accept a stipend for it, but he must take care to avoid scandal, not to appear wanting in respect for sacred things or prompted by cupidity, not to encourage religious indifference, etc.

(b) Private does not mean internal; the Church does not legislate about internal acts as such. Merely internal application of the Mass by a priest who would not in any way manifest his intention does not come under these rules. (Gasparri, l. c., 478.)

(c) It follows from the words of the Code that a person under excommunication but not *vitandus* may have Masses said not only for his conversion but also for all his other legitimate intentions.

(d) Apostates, heretics, and schismatics are

excommunicated; Holy Mass, therefore, may be applied for them only privately.

(e) No provision of the law directly prevents even the public application of the Mass for infidels, but the obligation always remains of avoiding scandal.

86. 2°. For the Dead. In regard to the deceased, the Code simply declares it permissible to offer Holy Mass for the souls expiating their sins in purgatory, without any further specification.

(a) Holy Mass cannot be offered for, because it can not benefit, the lost in hell, nor the souls in limbo, nor the blessed in heaven.

We know that in limbo dwell children who died without baptism; for these we do not offer the Holy Sacrifice.

We are sure of the salvation in heaven of children who died after baptism before reaching the use of reason and of such adults as the Church has officially inscribed on the roll of her saints and her blessed; we offer Mass in their honor, not for them.

We have no means of ascertaining the condition of other souls and no absolute proof of the exclusion of any of them from purgatory and of their damnation. To which, then, may we apply and to which must we refuse the fruits of the Mass?

(b) Some canonists would apply the same rule to the dead as to the living, refuse to offer Mass for the *excommunicati vitandi*, since their conversion has become impossible by death, permit its private application for the *excommunicati tolerati* and the public application for all other deceased.

This would imply public application of Mass for some to whom the Church refuses Christian burial and all funeral services, and on the contrary refusal of the same for some whom we are permitted to bury with all the rites of the Church, which includes Mass, for example those who had incurred an excommunication but whose censure was not denounced by declaratory or condemnatory sentence. (Can. 1240, 1241.)

(c) The meaning of the present law would rather seem to be that we may apply the Holy Sacrifice, at least privately and conditionally, to all for whom we may entertain some hope of salvation.

As for the public application, we should refuse it to all who for the public and for the Church, in the external forum, and from all appearances, whatever may be the reality before God, have died outside of the Church and in the state of grave sin, which excludes them from heaven and purgatory. This leads to the conclusion that in practice we may apply Mass publicly for all those to whom the Church grants Christian burial and privately for all of whose eternal damnation we have no moral certainty. (Cappello, l. c. n. 623.)

According to many authorities, this private Mass must not be one *De Requie* or at least not contain the special prayer for the deceased person. Certainly it should not be announced publicly. (Lehmkuhl, n. 243; Noldin, n. 176; Cappello, n. 619.)

V. PREPARATION BEFORE, AND THANKSGIVING AFTER, MASS.
(Can. 810.)

87. The law of the Church demands that the

priest should devote some time before ascending the altar to preparation for this august function and that after the celebration of the sacred mysteries he should not neglect to return thanks to God.

It does not determine either the form or the duration of this preparation or thanksgiving. Theologians and spiritual writers usually require half an hour or at least a quarter of an hour for each.

The Missal gives some prayers which may serve for the preparation or thanksgiving. It does not prescribe but only suggests the recitation of the preparatory prayers if they are found suitable.

The rubric concerning the prayers after Mass has the preceptive form, still it is not clear that their recitation is made strictly obligatory. (Vermeersch, l. c., n. 81.)

VI. DRESS AND VESTMENTS FOR MASS. (Can. 811.)

88. 1. A priest when celebrating Mass ought to wear the cassock and the sacred vestments prescribed by the rubrics of his rite, that is, in the Latin rite, the amice, cingulum, alb, stole, maniple, and chasuble.

It is considered a grave offence to celebrate without stole and maniple or without alb or chasuble. A grave reason would justify celebration without stole or maniple.

The sacred vestments must be blessed and of the color prescribed by liturgical rules.

2. Cardinals, Bishops, Abbots after receiving the blessing have the right to wear the skullcap and ring at Mass, but not other priests without

Apostolic Indult. In case of necessity, however, a priest might probably wear a skullcap during Mass without special authorization, provided he would take it off from the Sanctus till after the Communion.

The Code does not renew the ancient decrees against the wearing of a wig at Mass. (Vermeersch, l. c., n. 83.)

VII. ASSISTANT PRIEST AND SERVER. (Can. 812. 813.)

89. 1. *Assistant Priest.* 1°. Bishops and other Prelates entitled to the use of Pontificals, *i. e.*, of crosier and mitre, may have an assistant priest when celebrating Mass. Other priests, even members and dignitaries of chapters when they take the place of the Bishop at a solemn function, have no right to that distinction.

The Congregation of Rites makes an exception only in favor of young priests celebrating their first solemn Mass and of canons who have enjoyed the privilege from time immemorial. (Cappello, n. 742; Many, n. 141; Gasparri, n. 652.)

2°. The ancient decrees bearing on this point of discipline usually refer to solemn High Masses. The Code likewise speaks here of assistant priests employed to honor the celebrant or add solemnity to the ceremony. This rule does not concern the priest who, for other reasons, attends the celebrant of a private Mass, for example, a newly-ordained priest who may need guidance or an infirm priest, or one celebrating Mass on an ocean steamer. (Cappello, n. 742.)

90. 2. *Server.* A universal custom and the con-

stant practice of the Church confirmed by papal decrees (6, X, I, 17), and now more explicitly and formally by the modern legislator, demand that a priest should not celebrate Mass, not even privately, without a minister who serves and answers him.

1°. Canonists consider this law as imposing a serious obligation, from which would excuse only grave and urgent reasons, such as the necessity of administering Holy Viaticum, of enabling people and the priest himself to hear Mass on a Sunday or feast-day, or the necessity of continuing the Mass if the server leaves after it was begun even though not far advanced. (Many, l. c.)

2°. By special Indult the Holy See sometimes authorizes priests and Bishops, particularly in missionary countries, to say Mass without a server; but even then it restricts the permission to cases of real necessity. This, however, in order not to empty the concession of all meaning, must be understood of those cases in which a priest could not otherwise say Mass, although he may wish to celebrate it merely from motives of devotion. (Putzer, l. c., n. 162; E. R., 1892, p. 381 i. May 1919, p. 550, Sept. 1919, p. 318.) Simple convenience would certainly not justify the use of the Indult.

When a priest says Mass without server he makes the responses himself, but at the beginning he recites the *Confiteor* only once; in the prayer *Misereatur* he substitutes the word *nostri* for *vestri*, and in the response *Suscipiat* he says *de manibus meis* instead of *de manibus tuis*.

91. 3°. The minister must serve, that is, move

the Missal, present the wine and water at the offertory and ablutions, and ring the bell. He may not, in private Masses, open the Missal or find the places for the celebrant, prepare the chalice, pour the water at the offertory, purify the chalice after the ablution.

He must answer in the name of the people the prayers and blessings of the celebrant as indicated in the Missal and should be taught to do so in a distinct and correct manner, but several authors remark that his mispronunciations or omissions should not cause uneasiness to the celebrant, and that the latter should not attempt to correct him then, but may supply secretly the more notable defects. (Gasparri, n. 648.)

It takes a less serious reason to say Mass without any minister at all.

4°. Cardinals and Bishops may have several ministers to serve their Mass, but only one is allowed for the low, strictly private Mass of inferior Prelates and simple priests. The parochial Mass or the community Mass in an institution is not strictly private, nor are Masses celebrated with special solemnity on extraordinary occasions. (Cappello, n. 740.)

The same minister should not serve and answer several Masses at the same time.

5°. The minister should be of the male sex; women are never permitted to serve at the altar; Mass should rather be said without any minister. But in the absence of men, a woman may, for a just cause, be used to make the responses on condition that she does so from a distance, without under any pretext approaching the altar.

The Holy Office has repeatedly declared it unlawful to employ heretics and schismatics or their children as ministers at Mass.

ARTICLE II

rites and ceremonies of the mass

(Can. 814-819.)

92. 1. *Elements of the Sacrifice.* 1°. By divine institution the sacrifice of the Mass must be offered in bread and wine. These constitute what theologians have called the remote matter.

2°. Ecclesiastical, if not divine, law commands that to the wine be added some water in very small quantity, not as condition for the validity but as so important a part of the rite that the Church never dispenses from it. If its omission was noticed after the Consecration it should not and could not then be supplied. (Vermeersch, n. 84; Cappello, n. 293.)

3°. This water should be natural; two or three drops suffice or even, strictly speaking, one drop, provided it becomes mixed with the wine.

Poured in too large a quantity it might endanger the validity of the consecration by modifying the nature of the wine. This danger does not exist as long as the water does not exceed one-eighth or one-fifth of the wine, or according to some one-third in the case of particularly strong wines.

93. 2. *Eucharistic Bread.* 1°. For the validity of the sacrifice the bread: (a) Must be made from substantially pure wheat, not from barley,

oats, rye, or any other kind of grain or vegetables or fruits.

(b) It must be kneaded with natural water not with other liquids, such as milk, oil. (Gasparri, n. 801.)

(c) It ought to be baked by fire, not merely dried in the sun or boiled in water. (Cappello, 267.)

2°. For the lawfulness of the sacrifice: (a) The bread should be recently made, that is, not older than two weeks according to some, or twenty or forty days according to others (Vermeersch, n. 86), so as to avoid the danger of corruption, which may be increased by the nature of the climate or the condition of the atmosphere. The Congregation of the Sacraments condemned the practice of using bread two or three months old. (Dec. 7, 1918; A. A. S. 1919, p. 8.)

(b) The hosts should not be stained or broken or moldy or corrupted in any way; in the Latin Church they regularly have the circular form and the one destined for the celebrant is of larger size than those distributed to the faithful.

(c) Some Churches use leavened and others unleavened bread. Priests must in this conform to the rite of the Church to which they belong, not of that in which they celebrate. The Code does not seem to leave room for controversy on this point any longer. (Can. 816.)

94. 3. *Eucharistic Wine*. 1°. For the validity of the consecration the wine: (a) Must be natural, substantially pure wine, pressed from ripe, not green or wild, grapes, not made artificially nor from any other kind of fruit.

(b) It should not have lost its nature and

turned to vinegar or undergone a substantial change by the admixture of other elements in notable quantity. (Capello, n. 276.)

2°. It is not permitted to use (a) slightly corrupted or sour wine, nor outside of cases of necessity, must or sweet wine.

(b) The Holy Office allows missionaries to use raisin wine when made under certain conditions. The dried raisins should be placed in cold water for seven or at most ten hours, the water not absorbed by them should then be poured off, the raisins dried and pressed. (July 22, 1707; May 7, 1879; Coll. n. 697, 705; Gennari, Consultationes Morales, Con. cvi.)

(c) Perfect purity desirable in Mass wine would exclude the mixture of any foreign element; in order, however, to strengthen certain wines and prevent their deterioration the Holy Office permitted the addition of some alcohol, provided the latter be itself extracted from wine, added during the fermentation, and in such quantity that together with what the wine contained naturally it does not exceed the proportion of twelve per cent. (July 30, 1890.) If the wine itself contains more than twelve per cent of alcohol and still needs strengthening a subsequent decree permitted it to be increased to seventeen or eighteen per cent.

Another means of obtaining a more alcoholic wine is to condense the must before fermentation by means of evaporation; the Holy Office authorized the use of this wine for the Holy Sacrifice, provided the process would not prevent all natural fermentation. (August 5, 1898; May 22, 1901.) Absence of fermentation would not,

however, prevent from being valid matter juice thus pressed from ripe grapes, as long as it retains a sufficient quantity of alcohol, *v. g.*, five per cent. (Nouvelle Revue Théologique, 1905, p. 554, 623; 1911, p. 588.)

The Congregation did not approve of the mixture of forty or fifty grams of tartaric acid to a hectolitre of wine (H. O. May 9, 1892) nor of the addition of sugar to improve the taste of the wine (Collect., n. 1949), nor does it seem proper to have recourse to chemical treatments to correct its acidity. (Periodica, Jul. 15, 1912, p. (57)-(71).)

95. 4. *Simultaneous Consecration of Bread and Wine at Mass.* (Can. 817.) The Church pronounces it a grave disorder voluntarily to consecrate or attempt to consecrate one species without the other or both species outside of Mass.

1°. The two consecrations do not depend one upon the other; the nullity of the first because, for example, of substantial defect in the matter is no obstacle to the validity of the second; and likewise the nullity of the second would not affect the first; but a priest who would deliberately decide to consecrate only one element or knowingly use insufficient matter would commit a grave sin of disobedience to the command of Christ to do what He had done; moreover, according to some theologians, his act would be invalid, because he has not the intention of doing externally what the Church does. Still less would we find that external, whatever may be the interior, intention in the case sometimes proposed as an objection, of a priest passing in front of a bakery and pro-

nouncing the words of consecration over baskets of bread. (Labauche, l. c., p. 481; Boudinhon, *Revue du Clergé Français*, t. 74, p. 489; t. 76, p. 724.)

2°. Even when valid the consecration of one of the elements alone does not, according to the common teaching of theologians, suffice for the sacrificial offering of Christ, which requires His presence under the two distinct species. A few see in it a true sacrifice but not fully corresponding to the institution of Christ.

From this it follows that if a priest would discover that in his Masses one of the consecrations has been invalid, because, for example, he used substantially adulterated wine, according to the first opinion he has not offered a real sacrifice nor fulfilled his obligation towards the persons from whom he may have received a stipend, and consequently he must say the Masses over again or obtain a condonation. According to the second view he has probably said Mass validly and fulfilled his obligation and, therefore, could not be obliged to make reparation. In such cases the Congregations when consulted recommend as the safer course to say the Masses again, or if this would prove a heavy burden to apply to the Holy See for condonation. (Cappello, n. 561; Amidu *Clergé*, Feb. 13, 1908; p. 153; Gennari, *Consul. Morales*, I, p. 475.)

3°. Consecrating both species but outside of Mass without any of the rites and prayers prescribed would imply great irreverence and sacrilegious disregard for the law of the Church in a very important matter. It might also indicate

a want of intention of doing what the Church does and hence render the validity of that act at least doubtful.

96. 5. *Rites and Liturgical Language.* (Can. 818, 819.) 1°. Rites. It required some time for the Eucharistic service to assume a fixed and official form. Except in regard to the more important parts, such as the consecration of the elements, much was left apparently to private initiative in the beginning.

Councils of the latter part of the fourth century (Carthage, 397, Can. 23; 401, Cod. 103) suppose the existence then of a definite legislation on the subject, but of one largely local and diocesan in character. (Duchesne, *Christian Worship*, ch. ii.)

In his letter to the Bishop of Eugubium, in 416, Pope Innocent I claimed for the Roman liturgy exclusive right to recognition by the whole Latin Church; this came to pass only several centuries later. Meanwhile great variety continued to prevail in the practice of the different Churches and abuses often crept in which Popes and Councils endeavored to correct. (Braga, Can. 1, 675; Toledo, 681, Can. 5; c. 7, 10, 11, D. II, de Cons.; Trid., sess. XXII, *De observandis et vitandis in celebratione Missæ*.) The more effectively to remedy the evil Pope Pius V published a revised edition of the Roman Missal and in the Bull which accompanied it (*Quo primo*, Jul. 14, 1570) he commanded both the secular and regular clergy, except such bodies as could prove a prescription of at least two hundred years, to use it without change or addition of any kind.

97. The present Code does not withdraw any of

the existing privileges, but it enjoins on all priests in the celebration of Mass accurately and devoutly to observe the rubrics of their liturgical books and guard against the addition of ceremonies of their own choice, all contrary customs being disapproved.

(a) Every priest ought to say Mass in the rite of the Church to which he belongs; mixture of rites or passing from one rite to another requires permission from the Holy See. Latin priests may not say Mass in the Greek rite even when they travel in the Orient and celebrate in a Greek church, and Greeks may not say Mass in the Latin rite. Likewise regulars having a liturgy of their own must follow its prescriptions even outside of their churches and outsiders celebrating in their churches must retain their own rite. Priests of the Ambrosian rite may, however, adopt the Latin rite in places where it prevails.

For the Calendar or Ordo the rule is different. In a church or public oratory, which includes the main chapel in a seminary, college, hospital, or other such institutions, the Mass must be said in conformity with the Calendar of that church or oratory, at least on days of the double rite, even if it has to be that of a Blessed or of a Saint special to an Order. In other oratories a priest follows his own Calendar. (Cong. R., May 22, 1896.)

98. (b) In the Latin Church, except for special privileges, Mass ought to be celebrated according to the order and rubrics of the Roman Missal as published by St. Pius V and revised by authority of Pope Benedict XV. (July 20, 1920; A. A. S., Oct. 1, 1920.)

Canonists and theologians commonly make a

distinction between prescriptive and directive rubrics; the former impose a strict obligation, light or grave according to the matter, the latter contain only a counsel and do not bind in conscience except indirectly or *per accidens*. They generally consider as prescriptive the rubrics which concern the celebration of the Mass itself and as merely directive those which refer to what immediately precedes or follows the celebration, like the prayers for the preparation or thanksgiving, for the putting on of the vestments, the washing of the hands, etc. (Noldin, n. 208; Cappello, n. 816, 818.)

(c) The Church strictly forbids all arbitrary changes, whether by omission or addition, in the manner of celebrating Mass, even for the sake of personal devotion.

The omission of those parts which liturgists call extraordinary as occurring only in certain Masses, like the *Gloria* or the *Credo*, does not constitute a serious disorder as readily as that of the ordinary parts which belong to the integrity of the rite, especially those which have a close connection with the more important acts, the consecration and communion. Thus St. Alphonsus and other theologians would consider as a grave offence the omission of the gospel, of any notable portion of the canon, of the *Pater Noster*, the *Agnus Dei*, the *Domine non sum dignus*, of all genuflections, inclinations to the cross, but not that of a commemoration, the sequence, nor more probably that of the Passion in Holy Week or of the lessons on ember-days. (Cappello, n. 818, 819.)

A priest who can not perform all the ceremonies prescribed may still celebrate Holy Mass, at least in private, as long as he does not have to leave out anything of great moment. For a notable departure from the common order he would have to obtain permission from the Ordinary or the Holy See.

Additions whether of prayers, ceremonies, gestures, or rites of any kind are also strictly prohibited during Mass, particularly if one intended thereby to modify the liturgy of the Church or introduced elements foreign to the Missal.

(d) The Code condemns and, therefore, abrogates all customs contrary to the prescriptions of the ritual books regarding the celebration of the Holy Sacrifice; nor could new ones easily be introduced. (*Ephemerides Liturgicæ*, Jan. 1921, p. 20.)

99. 2°. Liturgical Language. Mass must be celebrated in the language proper to each one's rite as approved by the Church. The Holy See alone can dispense from this rule.

In the West Latin has been the liturgical language for many centuries. Formerly, in the Roman Church, the epistle and gospel were read both in Latin and Greek, a practice long abandoned except at solemn Masses celebrated by the Pope.

Eastern Churches often use their national language, but as they retain the ancient forms whilst common use introduces many modifications, the language of the liturgy not seldom comes there also to differ considerably from that of the people. (*Gasparri*, n. 852.)

ARTICLE III

TIME AND PLACE FOR THE CELEBRATION OF MASS

(Can. 820-823.)

I. TIME FOR SAYING MASS. (Can. 820, 821.)

100. 1. *Liturgical Days.* 1°. St. Justin (*Apolo-
gia* I, n. 67) and the Teaching of the Twelve
Apostles (c. xiv, n. 1) connect the celebration of
the Eucharist with the first day of the week.
Towards the end of the second century Tertul-
lian mentions it as one of the features of the
stational devotions held on the fourth and sixth
days of the week. (*De Oratione*, c. xix.)

To these three liturgical days, as they were
called, some of the Oriental Churches soon added
a fourth one, Saturday, and by the end of the
fourth century the practice of celebrating the
Holy Sacrifice every day of the week existed in
several countries, although it took some time
longer to become universal. (*Martène*, l. c., lib.
i, c. 3, art. 3; *Many*, n. 13.)

101. 2°. The present common law does not for-
bid the celebration of Holy Mass on any day of
the week or year, but each priest must conform to
the special liturgical prescriptions of his own rite.

In the Latin rite the celebration of Mass is
permitted every day except on Good Friday and
only with certain restrictions on Maundy Thurs-
day and Holy Saturday.

(a) On Good Friday no Mass, either private
or public, is permitted except possibly in the ex-
traordinary and little practical supposition that it

would be necessary for the administration of Holy Viaticum to a dying person.

The *Missa Præsanctificationum*, having no consecration but only communion, is not a real sacrifice. Should a particular feast of obligation fall on Good Friday the people would have to abstain from servile works, but the duty of hearing Mass would not exist. (Many, n. 14; Cappello, n. 783.)

(b) On Maundy Thursday a solemn Mass, accompanied by the other functions prescribed in the Missal for that day, is celebrated in cathedral and collegiate churches and in the churches of regulars. The latter may have instead a private low Mass if circumstances do not permit them to celebrate a solemn one. (Aug. 31, 1839, n. 2799.)

Parochial and quasi-parochial or subsidiary churches may and should have a solemn Mass with the other functions or at least a *Missa cantata* in accordance with the ceremonial of Benedict XIII. Should they find even this impossible or too difficult they are authorized to have a private low Mass.

In oratories that do not habitually reserve the Blessed Sacrament there should be no Mass said on that day, nor in those which can not have the complete services of Maundy Thursday and Good Friday, excepting the oratories of regulars, as said before.

In the oratories of confraternities which keep the Blessed Sacrament, and in those of Religious Communities with simple vows, of seminaries, colleges, hospitals, etc., a solemn Mass may be celebrated and the other functions of the day

performed, but except for a special Apostolic Indult or perhaps a long custom the services might not be carried out in those oratories in the simplified form permitted by Benedict XIII for parish churches. (Dec. 9, 1899, Dec. Auth., n. 4049; Many, n. 15; Cappello, n. 784.)

Bishops and Cardinals may celebrate a private Mass or have a priest celebrate one in their presence.

102. (c) On Holy Saturday private Masses are prohibited more strictly still than on Maundy Thursday.

Cathedral, collegiate, and conventual churches have on that day a solemn High Mass; parish churches a solemn Mass or a *Missa cantata*. According to some, they might also have a low Mass if circumstances did not permit a more solemn one. (Cappello, n. 786.) Other churches or oratories which had the services of the previous days may sing a solemn High Mass. They are not bound, however, to do so as long as they do not have to bless the font.

A Bishop holding ordinations on that day may say a private Mass in his own oratory, beginning with the prophecies. (Cappello, 786; Many, 16.)

In the Ambrosian rite Mass is not said on the Fridays of Lent; in most of the Oriental rites it is celebrated only on Saturdays and Sundays in Lent; the other days admit only of the *Missa Præsanctificatorum*.

103. 2. *The Hour for Mass.* 1°. The early Christians held their reunions generally during the night, either late in the evening or early in the morning, *stato die ante lucem*, as Pliny writes.

After the persecutions it became the practice to celebrate Mass in the morning, usually about nine o'clock, except on fast-days, when it was put off till the hour of the first meal, *i. e.*, till three o'clock or till the evening during Lent, in order not to break the fast. Some of the principal feasts, Christmas, Easter, Pentecost, St. John the Baptist, the Sundays following the ember-days or ordination days, had a Mass during the night that preceded them.

This refers to solemn Mass; for private ones continued for a long time to be said at any hour of the day, not at night, in the morning or in the evening till after compline. (Martène, lib. i, c. 3, art. 4.)

By the middle of the sixteenth century, and probably before, custom and positive law embodied in the rubrics of the Missal had set as the time for Mass from dawn to midday, and this had remained the rule till the publication of the Code. (Gasparri, n. 99; Many, n. 20.)

(a) A decree of Benedict XIII (Dec. 20, 1724), issued in favor of the Roman clergy and extended afterwards to the whole Church, had made it permissible to begin Mass twenty minutes before dawn and to end it twenty minutes after noon, or as some interpreted it, to comply with the law it sufficed not to end Mass before dawn nor to begin it after noon. By special Indults the Holy See authorized some priests, particularly missionaries or members of certain Orders, to say Mass one hour before dawn and one hour after noon.

(b) The Roman Missal had retained the ancient practice of the midnight Mass for Christmas,

but it permitted only one Mass at midnight, the solemn or conventual one; the Congregation of Rites repeatedly declared it an abuse for any priest, regular as well as secular, to celebrate any private Mass before dawn unless he had a special Indult from the Holy See. (Gasparri, III.)

(c) In 1907, however, Pope Pius X, wishing to foster in the faithful devotion towards the Word Incarnate, authorized the celebration of three Masses on Christmas night in any religious or pious house having a chapel in which the Blessed Sacrament was kept, with permission to distribute Holy Communion to the people also, which the rubrics did not permit at the solemn Mass.

104. 2°. Present Law. It maintains with some modifications the discipline established by custom or successive particular decrees.

(a) Mass should not commence earlier than one hour before dawn nor later than one hour after noon.

(i) The Code extends the time for saying Mass, as had often been done by Indult, and it determines that the two moments it sets as extreme limits are for the beginning of Mass; thus there remains no room for the various interpretations which had prevailed before.

(ii) Dawn, that is, the time that elapses from the moment the light of the sun commences to illumine the earth, indirectly through the atmosphere, till sunrise, lasts as long as the sun remains below the horizon within eighteen degrees, and this varies with the different latitudes and the different seasons of the year. In regions on the thirty-fifth degree of latitude north, dawn lasts 1 hr.

25 in March and 1 hr. 48 in June; in those about the fortieth degree it varies between 1.31 and 2.5. Further north there are periods of the year when the sun does not go below the horizon, or at least not more than eighteen degrees, and others, on the contrary, when it does not rise above the horizon.

If, for example, the sun rises at 7 o'clock and dawn in that place and at that time of the year lasts one hour and a half, Mass may be begun at 4:30. In no case should the Mass of the day be commenced before midnight even though dawn would begin at 12:30 or earlier. Where the sun does not rise above the horizon the Congregation of Rites gave it as a practical rule to reckon as daybreak the moment early risers commence to work. (Nov. 2, 1634; Many, n. 22.)

105. (iii) As enacted in the General Norms (Can. 33), in the private celebration of Mass we may follow the local time, mean or true, or the legal time, regional or extraordinary; in the public celebration we should conform to the common usage of the place.

(iv) Ordinaries may, in particular cases and for just causes, dispense from this law. It ceases to bind when a grave reason calls for an exception, as on the occasion of some solemn function, of a long ordination, of an extraordinary funeral or wedding; or if this be necessary to give opportunity to working people of hearing Mass even on week-days, if a priest had to start early on a journey and could not say Mass without anticipating the hour. It requires a more serious reason to begin before than after the regular time. (Cappello, n. 794; Many, n. 23.)

106. (*b*) On Christmas night the conventual or parochial Mass may be commenced at midnight, but no other Mass except by special Apostolic Indult.

(*i*) The present law explicitly authorizes the celebration of the midnight Mass in parochial as well as in conventual churches, and like the former legislation it excludes, in such churches, any other than the parochial Mass without special permission from the Holy See. A pastor may not, therefore, after celebrating the parochial Mass say a private one unless he has an Apostolic Indult.

(*ii*) The wording of the law clearly indicates that, as Congregations had repeatedly declared before, the Mass should not be commenced before midnight.

(*iii*) It does not restrict the permission to solemn Masses, since the parochial Mass does not necessarily require solemnity (Vermeersch, n. 97); neither does it explicitly authorize the distribution of Communion at this Mass, as it does in the following provision, but we find in another part of the Code the principle that permission to say Mass implies permission to distribute Holy Communion to those present. (Can. 846, § 1, 867, § 4.)

(*iv*) Local Ordinaries might, in particular cases and for grave reasons, such as the existence of serious abuses in certain localities, forbid the celebration of the midnight Mass; but they can not, by general decree and without sufficient cause, take away a privilege granted by the common law. (Monitore, Gennaio 1923, p. 24; Can. 1261.)

107. (*c*) In all religious or pious houses which

possess an oratory with faculty of habitually keeping the Blessed Sacrament, one priest may, on Christmas night, with due regard for all rubrical prescriptions, say the three ritual Masses or one of them; the faithful present can fulfill the precept of hearing Mass, and he may distribute Holy Communion to them if they desire.

The Code thus maintains the concession made by Pius X, only expressing it in slightly different terms so as to exclude certain interpretations that had been advanced of the words of the Pope. (N. R. T., Dec. 1907, p. 656; Mai 1909, p. 294.)

(i) This concession is in favor of houses belonging to Religious with solemn or simple vows and of pious houses. By the latter term canonists understand institutes erected by ecclesiastical authority or even without its intervention (Schmalzgruber, lib. 3, tit. 36, n. 3) for a purpose of piety or charity, as, for example, orphan asylums, hospitals, Catholic schools and colleges, seminaries, episcopal residences; some include even such places as penitentiaries, provided they have the required oratory with a chaplain laboring for the reform and sanctification of the inmates. (Vermeersch, n. 97.)

108. (ii) The Holy Office, interpreting the decree of Pius X, declared that it did not apply to the public churches of Religious, and that in the private or semi-public oratories themselves the Masses on Christmas night should not be opened to all but said *januis clausis* for the benefit of the members of the household, not of outsiders. This, no doubt, holds also under the present law, which introduces no change in this re-

spect. (Nov. 26, 1908; A. A. S., Jan. 15, 1909.)

If, however, Religious had no oratory but only a church, they might probably celebrate the three Christmas Masses therein during the night for the members of their community, *januis clausis*. Probably, also, the private character of these Masses does not exclude absolutely all outsiders, and the presence of just a few friends would not constitute a violation of the law. (N. R. T., l. c.; Vermeersch, l. c.)

(iii) Only one priest in each house may enjoy this privilege, even if the house had several oratories; not all the priests in the community, as some had understood the words of Pius X to imply.

(iv) He may say one Mass or two or the three as found in, and in the order of, the Missal, not twice or three times the one marked *in nocte*, and he must observe all the rites special to that day in regard particularly to the taking of the ablutions only after the last Mass.

(v) Neither the decree of Pius X nor the present law prescribes for these Masses the solemnity formerly required in the one Mass permitted in conventual churches; they do not exclude it either. Ancient rubrics have no direct bearing on this newly-introduced discipline.

(d) Cardinals and Bishops may say the three Christmas Masses during the night or have them said in their presence. (Can. 239, § 1, 4; 349, § 1, 7.)

II. PLACE FOR SAYING MASS. (Can. 822, 823.)

109. 1. *Ancient Discipline.* 1°. Before the Council of Trent. During the persecutions the

Holy Sacrifice was offered wherever safety and convenience suggested: "Any place serves as a temple for our sacred meetings," writes St. Dionysius of Alexandria, "a field, a desert, a ship, a stable, a prison."

Under the Christian emperors ecclesiastics often accompanied the armies and said Mass for them in the camps; ancient sacramentaries have Masses for the sick-room; when on a journey priests celebrated freely under a tent or in the open air; for any serious cause they said Mass in private houses; all regulars came to have, like Bishops, the privilege of the portable altar; Bishops had power to grant it to priests for any reasonable cause. (Martène, lib. I, ciii, art. 5; Many, n. 2.)

2°. After the Council of Trent. This great freedom having given occasion to abuses, the Council felt the need of restrictions; it reserved to the Holy See the granting of the privilege of the portable altar and of the domestic oratory and in general of the permission for celebrating Mass outside of churches and oratories, except in cases of real necessity. (Sess. XXII, c. quanta cura.) It took away from regulars the privilege of the portable altar; some of the Orders obtained it again for their members afterwards and the Congregation of the Propaganda usually granted to missionaries ample faculties to say Mass in any decent place, in the open air and under the ground as well as in private houses.

110. 2. *Present Law.* 1°. Regularly Mass must be celebrated on a consecrated altar or on an altar stone and in a church or chapel consecrated or blessed or dedicated to this service in accord-

ance with legal prescriptions. The Code treats of altars and churches or oratories, their erection, consecration, blessing, etc., in the second part of the third book, Can. 1161-1202.

2°. The privilege called of the portable altar implies permission to erect an altar and celebrate Mass in any becoming place, always on an altar stone, in a private house, public hall, in the open air or under ground, but not at sea; it is granted by common law or by Papal Indult exclusively. Cardinals, Bishops, Vicars and Prefects Apostolic, Abbots and Prelates Nullius, Administrators Apostolic, have it by common law. Vicars Apostolic ordinarily receive power to communicate it to their missionaries. (Cappello, n. 759.)

3°. To celebrate Mass on a ship requires a special, distinct authorization; the Congregation of Rites declared, March 4, 1901, that Bishops could not grant it to their priests, nor can the Bishop of the diocese from which the vessel sails, as some thought. Application must be made for it to the Holy See or to one of its representatives, in the United States to the Apostolic Delegate with approval of the Ordinary. (Eccl. Rev., Jan. 1924, p. 99.) Cardinals and Bishops have that privilege also by common law (Can. 239, § 1, 8; 349, § 1, 1) and some missionary societies by special Indult. When granting it the Congregation usually recommends to priests to take all necessary precautions to avoid danger of profanation, having, if convenient, another priest to assist them at the altar, and to celebrate in a decent, respectable place. In one of its instructions the Propaganda had seemed to forbid the use for this of private cabins (March 1, 1902;

Many, p. 391), but a subsequent letter (Aug. 13, 1902) permitted a more lenient interpretation. (N. R. T., Mars 1909, p. 171; *Periodica de Re Canonica et Morali*, 15 Oct. 1922, p. 82.)

111. 4°. For any just and reasonable cause the local Ordinary and in any exempt house the major Superior may, in an extraordinary case and once in passing, authorize the celebration of Mass outside of a church or oratory, always on a consecrated stone, in a decent place and never in a bedroom.

According to the Commission for the Interpretation of the Code, this concession should be understood and applied in a strict manner. (Oct. 16, 1919 ad 12.) It represents substantially the powers enjoyed by Bishops under the Tridentine discipline, confirmed and somewhat extended by the Congregation of the Sacraments. (Dec. 10, 1912; N. R. T., Mars 1913, p. 171.) Their exercise supposes several conditions.

(a) Under the law of Trent canonists demanded a grave reason and one of a general character, affecting the whole community or a large portion of it. Under the present law, as by the decree of 1912, any just and reasonable cause, even though affecting only the priest or some individual person, may suffice.

(b) Ordinaries can use these faculties only in cases calling for this by reason of some exceptional circumstances, for example, on the occasion of some special anniversary or celebration, of some unusual concourse of people, in time of pestilence, etc., but not because, for instance, of the sickness of the priest or of one of his relations. (Vermeersch, n. 99.) The decree of 1912 did

not contain this clause requiring an extraordinary case.

(c) They can use them for particular cases, once in passing, *per modum actus*, but not to grant habitual, long permissions; canonists, however, do not consider as too long a permission which does not go beyond eight or ten days and it might be renewed once or twice if the same conditions continued. (Cappello, 750.)

(d) Authorization should be given to say Mass only in a decent, respectable place, never in a bed-room. Ancient canonists excepted the case of impossibility of otherwise administering Holy Viaticum to a dying person.

In grave and urgent necessity a priest might, according to common teaching, presume permission to say Mass outside of a church and chapel, if circumstances did not allow recourse to the Ordinary. (Vermeersch, n. 100.)

112. 5°. The law of the Church does not permit the celebration of Mass in the churches of heretics or schismatics even if they had formerly received valid consecration or blessing. In some instances the Holy Office has tolerated, by reason of necessity and as long as it lasted, the use of "simultaneous" churches, that is, churches in which Catholics and Protestants hold their services in turn at different hours. (June 13, 1634.)

A priest may, however, if he has no altar of his own rite celebrate Mass on one of a different but Catholic rite. The law positively excludes the use by Latin priests of the Greek antimensia. The antimensium consists "of a strip of fine linen or silk, usually ten inches wide and about thirteen to fourteen inches long, ornamented with the in-

struments of the Passion and containing relics of saints sewn into it." It serves as a sort of corporal and altar stone. (Catholic Encyclopedia, Antimensium; Dictionnaire d'Archéologie Chrétienne et de Liturgie, Antimension.)

6°. The main altars of the Roman basilicas of St. John Lateran, St. Peter, St. Paul, and St. Mary Major, and a few others outside of Rome, have the title of papal altars; no one, priest, Bishop, or even Cardinal may say Mass upon them without a Papal Indult.

ARTICLE IV

ALMS OR STIPENDS FOR MASSES

(Can. 824-844.)

(Martène, lib. i, c. iv, art. 6; Thomassin, P. iii, lib. i, c. 70-73, passim; Gasparri, n. 535-644; Many, n. 36-83; Wernz, III, n. 537; Bargilliat, Les Honoraires de Messe, Paris, 1905; Del Giudice, Stipendia Missarum, Roma, 1922; Cappello, n. 660; Vermeersch, n. 103; Dictionnaire de Théologie Catholique, Honoraires de Messes.)

I. ORIGIN AND LAWFULNESS. (Can. 824, 825.)

113. 1. *Origin.* In the early Church Holy Mass, celebrated only once a week or once a day in the same place, had the character of an exclusively public service at which all the members of the community, clergy and people, assisted, in which they all took part, the clergy by their ministrations, the people by their presence and by their offerings of bread and wine and other gifts which served for the sacrifice and for the support of the sacred ministers and of the poor. Thus all had also a title to a share in its fruits.

In the course of time the celebration of Mass grew more frequent, and while remaining essentially the sacrifice of, and for, the Church, it became also an act of private devotion both for priests and people. The latter attended less regularly and neglected the former general contributions. At the same time they more and more clearly understood the efficacy of the Mass and of its application for the dead and the living. Those who wished to have it offered for their intention would naturally make a special offering and gradually they came to make it in money, and not to the church or clergy in general, but to the individual priest who said the Mass.

Some writers find traces of this practice in the seventh, sixth, or even as early as the fourth century (St. Epiphanius, *Heresis*, xxv, n. 6; Thomasin, l. c., c. 71, n. 8); it certainly existed in the eighth, as we see from the rule of St. Chrodegang, although it may not have become universal before the twelfth.

114. 2. Lawfulness. 1°. General Principles. Some Catholic writers objected to the new custom of Mass stipends chiefly because of the abuses and the manifestations of clerical greediness it gave occasion to, or because it looked to them like trafficking in sacred things, especially when priests not only accepted but exacted the offering. Some particular Councils went so far as to forbid this under severe penalties. (York, 1193, Can. 3; Toledo, 1324, Can. 6.)

Generally Synods and individual Bishops implicitly if not explicitly accepted the practice, striving only to eliminate the abuses possibly connected with it. When Wyclif and later on Cal-

vin or the Jansenists of Pistoia denounced it as impious or simoniacal, Councils and Pontiffs defended it and condemned their errors. (Many, n. 38.) Theologians explained that the stipend does not represent the price of the fruits of the Mass nor of the celebrant's labor, but a contribution towards the material support of him who distributes spiritual things. He has a strict right to it and the Church may determine that the faithful will have to discharge that duty towards him when they receive from him some spiritual assistance or favor like the application of Mass for their special intention.

The Code affirms again the legitimacy of Mass stipends as understood and approved by the Church.

115. 2°. Special Restrictions. The law of the Church forbids certain practices in connection with Mass stipends either as unlawful in themselves, or unbecoming, or liable to lead to abuses. Thus it does not permit:

(a) To receive a stipend for several Masses said the same day, except on Christmas day when, in accordance with ancient tradition, a priest may receive a stipend for each one of the three Masses.

Alexander II (53, D. I, de Cons.) and other Popes after him sharply rebuked ecclesiastics who said several Masses on the same day for the sake of the retribution, but they did not limit the lawfulness of the stipend in itself to one Mass a day. As late as the beginning of the nineteenth century priests, in some places at least, received two stipends when binating, and the moralists of the time, St. Alphonsus, Billuart, Bouvier, Gousset, have nothing in their works against the exist-

ing practice. The Church, however, did not favor it for fear of the abuses referred to by Alexander II. When the Congregation of the Council granted to priests permission for a second Mass it usually put the condition that they would not receive a stipend for it. Gradually custom gave to this discipline universal binding force. In the Code it has become a formal, written law. (Many, n. 58.)

Hence, except on Christmas day or by special Indult, if for one of the Masses, whether the one celebrated first or second it does not matter, a priest has received directly or equivalently some stipend, that is, some temporal retribution or advantage, he may not receive another, under any form, for the other Mass. Thus a pastor who has to say one Mass on Sundays for the people may not receive any kind of stipend for the other. But he might offer it in fulfilment of an obligation of charity, of religion, of gratitude, of a promise made gratuitously, or of a vow. The Congregation of the Council (Sept. 14, 1878) declared that a priest member of a society that imposed on its members the obligation of saying one Mass for each deceased member might apply the second Mass, when he binates, for this intention. The rule would apply also in case the members of the society had bound themselves to celebrate that Mass by a quasi-contract and, therefore, in justice, as long as they do not receive, even equivalently, a stipend for it, since this is what the law forbids. (Many, n. 60.) Nor does compensation for extrinsic labor or inconvenience, as for saying Mass at a very late hour or in a distant place, constitute a stipend.

The Holy See allows priests, sometimes, for special reasons, to receive two stipends the same day, either absolutely (Cong. Prop., Oct. 15, 1863) or on condition that they will give one of them to some pious work, *v. g.* to the seminary.

116. (b) Ecclesiastical law forbids likewise the application of a Mass for the intention of a person who may ask for it some day and offer a stipend for it, although he has not given it yet, and to keep the stipend given afterwards for the Mass said before. The Congregation of the Council, under Clement VIII, had condemned this practice as dangerous and liable to cause scandal. This mode of application is valid in itself, provided it is definite enough, as if made for the intention of the first person who will offer a stipend.

(c) A priest bound in justice, charity, or otherwise to apply and *de facto* applying a Mass for a certain intention may not receive a stipend for its application for another. Some theologians hold that Holy Mass offered for several persons benefits each one of them in the same degree as if it had been offered exclusively for him in particular; but this is not certain, and therefore in practice application really due on whatever ground, particularly if due by reason of a stipend, must mean application by special, primary, not by general or secondary intention. The Holy See has granted at times to individuals or communities Indults permitting the discharge with one Mass of several obligations even though arising from different stipends received (Palmieri, *Opus Theologicum*, Tr. X, sect. iv, c. 3, n. 245, 252), but the Pope may take from the treasury of the

Church to make up for any deficiencies. Urban VIII withdrew all these concessions.

Application by secondary intention may suffice to redeem a promise made gratuitously and without assuming any strict obligation.

(*d*) Several decrees of Popes or Congregations condemn the practice introduced at different times of receiving several stipends for the same Mass; for example, one for the impetratory and another for the satisfactory or one for the general and another for the special or most special fruit of the Mass. The Code expressly forbids again the receiving of a double stipend for the application of the same Mass as also receiving a stipend for the celebration and another for the application, unless it be quite clear that one stipend was offered for the celebration without application. This may occur when a priest is asked to say Mass in a certain place that a community may assist at the Holy Sacrifice on a certain day.

II. DIFFERENT KINDS OF MASS STIPENDS. (Can. 826.)

117. Canon law distinguishes three kinds of Mass stipends: manual, quasi-manual, and foundation stipends.

1. Manual stipends or Masses are those which the faithful give, as it were, from hand to hand, either out of pure devotion or in compliance with an obligation imposed upon them by a testator. If a person leaves to his heirs a sum of money to have Masses said for him every year, as long as the responsibility remains with the heirs who will offer the stipends to the priest they choose to say the Masses, these are manual.

2. Should the same sum with the obligation

which goes with it have been left to a church or ecclesiastical institution and duly accepted in accordance with the rules laid down in another part of the Code (Can. 1544-1551), it would constitute an endowment or foundation; the income from it would represent a fixed number of foundation stipends or Masses.

3. If for some reason or other these foundation Masses can not be applied in the place or by the priests designated in the charter for this purpose, they must be transmitted to other priests and an Indult obtained from the Holy See for this, if law or the conditions of the contract would not otherwise permit it. In relation to these priests they become then like manual Masses and receive the name of quasi-manual or *ad instar manualium*.

III. UNLAWFULNESS OF ANY FORM OF TRADING IN MASS STIPENDS. (Can. 827.)

118. I. *Ancient Decrees.* 1°. The Council of Trent admonishes Bishops to banish from the sanctuary all practices savoring of simony or greediness in matters pertaining to the Holy Sacrifice and Mass stipends. (Sess. XXII, De observandis et evitandis in celebratione Missæ.)

Benedict XIV deals with the same abuses in several of his Constitutions and threatens offenders with severe penalties. (*Quanta Cura*, June 30, 1741.)

2°. In the Const. *Apostolicæ Sedis* (Oct. 12, 1869) Pius IX pronounced excommunication *latæ sententiæ* against those who collected alms for Masses, had these celebrated for a smaller stipend, and retained the difference.

Some years later the same Pontiff, through the Congregation of the Council, condemned book-sellers and other dealers who collected stipends for Masses and had these celebrated by priests to whom they gave books or other articles by way of stipends. The fact that they had the required number of Masses said or that they thereby rendered a real service to poor priests or that the profits went to pious works did not excuse their action. Those who coöperated with them, either by giving them Masses which they had received from the faithful or by accepting books from them under these conditions, incurred the same guilt and penalty, that is, laymen an excommunication *latæ sententiæ* and ecclesiastics, suspension. (*Cum circa*, July 25, 1874; *Vigilanti*, May 25, 1893.)

In explanation of these decrees it was declared permissible, however, for ecclesiastics to whom the faithful had spontaneously offered Masses to have them said by priests to whom they would give good books or magazines in place of the stipends, as long as all the Masses were duly celebrated and there was no effort made to collect them. In like manner editors of religious papers or reviews might give priests Masses to say, retaining the stipends to the amount corresponding to the price of the subscription, provided they had not collected the Masses for this purpose. (Cong. Con., Ap. 24, 1875; S. Pen., Oct. 6, 1862; Many, n. 107; Dictionnaire, Col. 86.)

The legislator seems to have chiefly in view and to proscribe the collecting of Masses for a business motive.

3°. In 1904 (*Ut debita*, May 11) the Congre-

gation of the Council took up the same subject again, renewed the former enactments, and added some rules of a still stricter character. It strongly prohibited any collecting of Masses by any person who was not to celebrate them either personally or through priests under his authority; commanded that the stipends received from the faithful be transmitted to the priests who said the Masses without diminution or change, in *specie sua*, all privileges or Indults to the contrary notwithstanding; forbade, consequently, the use of Mass stipends to pay for religious articles, books, or subscriptions to magazines, all this under penalty of suspension or excommunication.

In some dioceses an ancient custom existed allowing pastors to retain partially or totally the stipends of Masses celebrated by their assistants in payment for their board. Asked whether this constituted a violation of the decree *Ut debita*, the Congregation answered in the negative. (Feb. 27, 1905; *Ami du Clergé*, 23 Juin, 1904; 3 Nov. 1904; 4 Mai, 1905.)

119. 2. Present Law. The Code commands strictly to avoid anything which might have even only the appearance of trading or trafficking in Mass stipends.

It thus maintains the existing discipline and implicitly confirms the ancient decrees of Congregations, condemning what they had condemned, with some restrictions, however, that is, only in as far as it has at least the appearance of bartering with stipends. This permits a broad interpretation of some of the provisions of the decree *Ut debita*, which might otherwise appear rather severe. (Cappello, n. 680.) Hence:

1°. It remains forbidden for any one to collect Mass stipends and have the obligation fulfilled for a smaller sum and with a profit; booksellers or other merchants may not collect stipends in order to use them for business purposes.

2°. Dealers, on the other hand, like all other persons may, if they wish to have Masses said for their personal intentions, give books or other articles as stipends; they might also give books in place of stipends for Masses brought to them spontaneously by others.

Rectors of pious institutions to whom the faithful offer alms for Masses may ask priests to say the Masses gratuitously and give up the stipend for the benefit of the good work.

Assuming the obligation of celebrating Masses in exchange for books, subscriptions to magazines, or other publications, or for other objects, remains forbidden whenever it has at least the appearance of trading.

The present law does not renew the ancient censures and enacts only penalties *ferendæ sententiæ* for violation of these rules. (Can. 2324.)

IV. NUMBER OF MASSES TO BE SAID. (Can. 828-830.)

120. 1. The number of Masses said ought to correspond with the number of stipends offered and accepted. A priest may refuse to accept, for example, five dollars offered with a request to say ten Masses, but if he does accept he must say the ten Masses.

2. The obligation of saying the Masses rests with the priest who has received the stipends, even though the latter may afterwards get lost

either through or without his fault. He would have no obligation if the stipends were lost before they reached him.

This rule concerns directly manual or quasi-manual Masses; in the case of founded Masses, if the endowment perishes or ceases to bear fruit, the obligation ceases also, as the Congregations have decided on several occasions. (Con. of Coun., June 20, 1641; Many, n. 70.)

3. If a person offers a sum of money for the application of Masses without stating how many, the number should be determined according to the stipend usually given in the place in which the donor lives, not in the place in which the Masses are celebrated, unless it may be legitimately presumed that he had a different intention.

V. AMOUNT OF MASS STIPEND. (Can. 831, 832.)

121. 1. *By Whom Determined.* 1°. It belongs to the Ordinary of the place to fix by decree the amount which will constitute the regular stipend for manual Masses. As much as possible, although not necessarily, he should do so in Synod, which implies that Ordinary here means the Bishop, Vicar or Prefect Apostolic, and the Abbot or Prelate Nullius, but not the Vicar General without special mandate nor the Vicar Capitular, who have no authority to convoke the Synod.

The Bishop fixes also the stipend for founded Masses, since he determines the endowment necessary for the foundation and regulates the distribution of its fruits; but the Code does not treat this question here.

2°. The stipend does not have to be sufficient for the support of the priest, who can have other

sources of income. In fixing the amount the Ordinary must take into account laudable existing customs, the dispositions of the faithful, and the needs of the clergy. It may vary with the different kinds of Masses.

3°. Where there exists no episcopal decree on the subject the custom of the diocese serves as a rule, provided it has the conditions of universality and duration required for a true custom.

122. 2. Binding Force. 1°. All priests in the diocese, even exempt Religious, must abide by the episcopal decree or diocesan custom regarding stipends for manual Masses; no one may exact or even ask for a larger stipend than the regular one. By doing so a priest would commit an injustice entailing obligation of restitution and also become guilty of ecclesiastical simony.

2°. Any priest may accept a more generous stipend when spontaneously offered and likewise a smaller one, unless the Ordinary has forbidden this lest it should prove detrimental to other priests.

VI. SPECIAL, ADDITIONAL CIRCUMSTANCES. (Can. 33, 36.)

123. It is presumed that a person offering a stipend expects only the application of the Mass. If, however, he explicitly stipulates certain conditions for its celebration the priest who accepts the stipend must, by virtue of the implicit contract, fulfill those conditions.

1. *Qualities of the Mass.* If the donor asks to have Masses offered for the dead without any more explicit request the priest will satisfy the obligation by saying the Mass of the day when rubrics do not permit a Requiem Mass and even

when they would permit it. (S. C. In., Apr. 11, 1840.)

When the donor has asked expressly for a Requiem Mass which the rubrics permit and the priest says the Mass of the day, he does not have to apply another Mass or restore the stipend; still he has not completely fulfilled his obligation and, according to some, he would have to say a Requiem Mass but apply only its special suffrages to those whom he has deprived of them. (Many, n. 52; Cappello, n. 690.)

The same principles would apply in cases of donors asking for a Mass in honor of a certain saint or mystery simply, or asking expressly for the votive Mass of the saint or mystery.

Nothing forbids the saying of a Requiem Mass for the living as long as only the application of the Mass has been asked for.

When the stipend has been given for a solemn high Mass or a *Missa cantata* it does not suffice to say a low Mass.

Ordinarily, however, non-fulfilment of conditions pertaining only to the quality of the Mass would not exceed a venial sin.

124. 2. *Place of Celebration.* When the donor has asked that the Mass be celebrated at a privileged altar, unless the priest enjoys the privilege personally, he would not discharge the obligation by saying the Mass at a different altar, even though by way of compensation he would gain another indulgence and apply it for the same intention, as the Congregation of Indulgences has declared. (Feb. 16, 1852.) The same Congregation had made an exception in favor of a priest who, without any fault of his own, would

fail to gain the indulgence attached to the privileged altar and whom it authorized to make up for it by applying another indulgence without having to repeat the Mass. (Feb. 22, 1847; July 24, 1885.)

If a special altar or chapel or church has been asked for, and this for some particular reason, there is an obligation, although usually not a grave one, to comply with the request.

The faithful who give stipends in shrines or other places of devotion naturally expect and desire that the Masses be celebrated there; but as this may often prove impossible, the Code provides that in such sanctuaries notices be posted in conspicuous and easily accessible places warning the people that the Masses will be said there if convenient or else in some other church.

VII. TIME FOR DISCHARGING THE OBLIGATION.
(Can. 834, 835, 837.)

125. 1. If the donor has expressly determined a certain time for the celebration of Masses, they must be said strictly within the time appointed and agreed upon explicitly or implicitly.

2. If he has not determined any time a distinction must be made between Masses offered for an urgent cause and others: in urgent cases, *v. g.* of grave sickness, of dangerous operation about to be undergone, the Masses must be said as soon as possible.

In the absence of any special urgency the law prescribes that the Masses be said within a short time. Ancient canonists understood this generally to mean within a month or two months when the Masses were for the living. (Many, n. 50.)

But much depends, as the Code also states, on the number of Masses asked for.

In the decree *Ut debita* (May 11, 1904) the Congregation of the Council allowed one month for one Mass and six months for one hundred.

Wishing to arrive at a still more specific rule, the Archbishop of Lemberg submitted for approbation the following scale: one month for one to ten Masses, two months for twenty Masses, three for forty, four for sixty, five for eighty, six for one hundred. The Congregation did not wish to enter into these details and left the matter to the discretion and conscience of priests, guided by the decree *Ut debita* and the teaching of theologians. (Feb. 25, 1905.)

These decisions, although not having force of law under the present discipline, nevertheless contain reliable directions.

3. The length of time allowed for Masses in proportion to their number must be settled in relation to each giver. Thus a priest receiving thirty Masses from thirty different persons would have one month to say them, not three. Asked by the Archbishop of Lemberg whether the Masses received by priests from their Ordinary could be considered as coming from one single person, although offered originally by several, the Congregation replied that as much as possible the Ordinary should divide them among several priests, who could say them in due time.

126. 4. Except for some stipulation to the contrary, the time runs from the moment the one who is to celebrate the Masses receives them. (Can. 837.) This applies at least to Masses distributed by persons who have not assumed the

obligation of saying them, like executors of wills, administrators of pious funds, etc. According to some canonists, it would not apply to a priest who, finding that he can not say all the Masses he has accepted, hands them to another; the latter would have to celebrate them within the time set for the former. (Vermeersch, n. 106.) In the same answer just referred to, the Congregation stated that for priests who received Masses from their Ordinary, by Apostolic Indult time ran from the moment the stipends reached them.

5. When the donor has left the time for saying the Masses to the discretion of the priest, the latter may celebrate them at his convenience, provided he does not take more than a year.

The Code, renewing one of the provisions of the decree *Ut debita*, forbids any priest to assume for himself the obligation of more Masses than he can discharge within a year. This does not prevent him from accepting more, which with the easily presumed permission of the donor he will have said by other priests. With the explicit permission of the giver the decree allowed him to accept, although not to collect, more for himself also, and the Code seems to make the same concession. (Can. 841, § 2.)

VIII. TRANSMISSION OF MASSES. (Can. 837-841.)

127. 1. Whoever has Masses to be said by others should distribute them as soon as possible. This concerns Ordinaries or superiors of Religious Orders who supply their subjects with Masses, or administrators of pious places, rectors of churches or chapels of devotion, priests who have more

Masses than they can say, executors of wills or others.

2. The Masses of which one has the free disposal may be given to any priest known, in whatever manner, as absolutely reliable or recommended by the Ordinary. The present law does not, like the decree *Ut debita*, require personal knowledge of the priest by the person distributing the Masses, nor does it demand, like the decree *Recenti decreto* (March 22, 1907), the intervention of the Ordinary for transmission of Masses outside of the diocese. (Nouvelle Revue Théologique, Août 1907.)

As said before, the prohibition against entrusting Masses to booksellers or other dealers as also to directors of periodicals who would use them for commercial purposes still remains in force, and likewise the various rules enacted regarding the transmission of Masses to priests of the Oriental Churches exclusively through the Congregation for the Oriental Rites or the Apostolic Delegates or the Ordinaries. (July 15, 1908; A. S. S., xli, p. 460.)

Various conditions may limit this freedom in the transmission of Masses. A Provincial Council having forbidden the clergy to send Masses outside of the diocese without the permission of the Ordinary, the Congregation, interrogated as to the validity of this provision, sustained it as regards founded or quasi-manual Masses and also as to manual Masses given in favor of a pious place, the others remaining governed by the prescriptions of Can. 838. (A. A. S., 1921, p. 229.)

128. 3. Those who transmit to others Masses entrusted to them by the faithful, or in some other way, continue responsible for them until reliable information reaches them of acceptance of the obligation and reception of the stipend, not necessarily of the celebration of the Masses, as the decree *Ut debita* had it. Nor does the Code distinguish between Masses sent to Ordinaries or to the Holy See and those sent to others.

129. 4. Whoever hands manual Masses to others must give them also the stipend in full as he has received it, without diminution and without substitution of books or other articles, at least when this would savor of commercialism. He might retain part of it if the donor expressly allowed him to do so, or if in cases of larger stipends it was clear that the surplus was intended as a personal gift to him or a contribution towards his normal support. In some places people provide for the support of their pastor partially by means of more generous stipends, and the S. Penitentiary declared it permissible, when the pastor could not say the Masses thus offered him, to have them celebrated by others for the usual stipend and keep the rest for himself. (Ap. 6, 1742.)

The priest who says the Masses may likewise give up a part or even the whole of the stipend in favor of an institution or of the party who procured them for him; but he should do so freely and spontaneously without previous even tacit arrangement that would have the appearance of an unbecoming bargain.

In some sanctuaries or places of pilgrimage a small tax is levied on the stipends offered therein

for the upkeep of the church or chapel, but this requires a special Indult.

In founded or quasi-manual Masses the stipend often exceeds the usual diocesan one, and serves as a partial endowment of a prebend, chaplaincy, or institution. The chaplain or other beneficiary who has the Masses said by some other priest may give him the ordinary stipend and retain the surplus for his own support, provided this would not go against the will or wishes of the founder.

130. 5. Transmission of Masses to the Ordinary. (Can. 841.) Administrators of pious institutions and all persons responsible on whatever title for the fulfilment of Mass obligations have at the end of each year to transmit to their Ordinary, the Bishop of the place or the superior in a Religious Order, the Masses which remain still unsaid.

For quasi-manual Masses this obligation becomes binding with the end of the year within which the Masses should have been celebrated; for manual Masses, with the lapse of a full year from the acceptance of those Masses. Thus, if in a certain church a foundation requires the celebration of fifty Masses a year and only forty were celebrated during the year 1928, the remaining ten must be transmitted to the Ordinary at the end of December of that year or the beginning of the following January. If a priest received one hundred Masses on March 1, 1928, he should endeavor to say them before the first of September of the same year, or if he can not, he should give them to another priest who can; but if on March 1, 1929, some of them remain unsaid he

must transmit them to the Ordinary, as the latter may have directed, unless the donor had allowed him to take a longer time for the fulfillment of the obligation. (Cappello, n. 712.)

IX. DUTY OF ORDINARIES AND STIPEND REGISTERS.
(Can. 842-844.)

131. 1. The right and duty of watching over the proper discharge of the Mass obligations, whether founded or manual, belong to the local Ordinary in secular churches and in the churches of Religious to their superiors.

2. A strict account must be kept of Mass stipends by all responsible for them. Hence: (*a*) Rectors of churches and other pious places, both secular and religious, in which alms for Masses are usually received, ought to keep a special book in which they mark down very accurately the number, intention, amount of stipend and celebration of the Masses offered; and the Ordinaries: Bishops or Religious Superiors, ought to inspect these books at least once a year, either personally or through their representative.

(*b*) Ordinaries of dioceses and Religious Superiors who supply their subjects or other priests with Masses should at once enter the Masses together with the stipend they receive in a special book, in the order in which they come and take care as far as possible to insure a prompt celebration.

(*c*) Not only Ordinaries or ecclesiastics placed in authority, but all priests, whether secular or religious, ought to note down accurately the Mass intentions they have received and those they have satisfied.

CHAPTER II

THE MOST HOLY SACRAMENT OF THE EUCHARIST

(Can. 845-869.)

(Gasparri, c. ix; Many, Tit. ii; Wernz, III, n. 738; Martène, Lib. i, c. iv, art. 10; c. v, art. 1-4; Chardon, Histoire des Sacrements, De l'Eucharistie, sect. iii; Cappello, l. c., n. 311; Vermeersch, l. c., n. 111; Blat, l. c., p. 171.)

ARTICLE I

THE MINISTER OF HOLY COMMUNION

(Can. 845-852.)

132. 1. *Ancient Discipline.* As we learn from St. Justin Martyr (Ap. ii, ad Ant.), from St. Cyprian (De lapsis), and other writers, in the early Church after the consecration of the Holy Eucharist by the Bishop or priest, the deacons distributed it to the faithful at least under the species of wine, then they or the acolytes, or even lay persons in cases of necessity, carried it to Christians kept away from the assembly.

This practice continued for several centuries, with a tendency, however, gradually to restrict the attributions of deacons or inferior clerics. A Council of Arles (451, Can. 15) forbids deacons to give Communion in presence of priests under pain of deposition, and other Synods have similar enactments. Thus little by little inferior clerics ceased to have a share in the distribution of the Holy Eucharist and deacons became its extraor-

dinary ministers, exercising their functions only with special permission or when particular circumstances demanded.

In the beginning and for a long time the faithful received the consecrated elements in their hands; they might also preserve them in their homes and thus in a sense give Holy Communion to themselves. Still even then the real ministers of the sacrament remained the ones who had distributed to them the Eucharistic bread and wine.

133. 2. *Power of Order Required.* Although the mere transmission of the Sacred Species does not necessarily suppose a special power of Order, the dispensation of the Holy Eucharist has fittingly been reserved to those who consecrate or assist in consecrating it and whom the Lord has placed over the spiritual treasures of His Church.

(a) Ordinary minister. The priest, and he alone, as the minister of the sacrifice is also the ordinary minister of Holy Communion, which forms an integral part of the same.

(b) Extraordinary minister. Deacons consecrated to assist the priest at the altar have as one of their functions to administer the Holy Eucharist, but only as subordinate ministers. Under the present discipline of the Church priests usually distribute Holy Communion themselves, and the law forbids deacons to exercise this function without special authorization.

The Ordinary or the parish priest may give them this permission, not other superiors, as *v. g.* the rector of a church without parochial rights.

To grant it a grave reason is required, such as would exist, for example, if the priest could not without serious inconvenience bring Holy Viati-

cum to a sick person; if on account of the sickness of the pastor or his absence many people would be deprived of Holy Communion or would have to wait for a long time; if the priest would have other pressing occupations; if the communicants were very numerous, etc. In urgent cases the permission may be presumed.

(c) For very grave reasons, as if otherwise a person would die without Holy Viaticum, the Bishop may probably allow inferior clerics and even laymen to give Holy Communion to others or to themselves. (Gasparri, n. 1080.) This permission might also probably be presumed if time did not permit recourse to proper authority.

Lower clerics or lay persons administering Holy Communion without the required permission obtained or legitimately presumed would incur an irregularity; but a deacon under the same circumstances would not, because he is exercising, although unlawfully, a function of his Order. (Cappello, n. 332, 336.)

134. 3. *Power of Jurisdiction.* (Can. 846-850.) Common order and discipline in the Church demand that sacred ministers should not use their powers indiscriminately, and the sacraments in particular they may administer only to persons in some manner committed to their care. Hence regularly Ordinaries alone and pastors or ecclesiastics possessing quasi-parochial authority strictly have the right to give Holy Communion to their subjects. In decretal law we find this principle affirmed and enforced even by means of censures. (1, V, 7, Clem.) Clement V punished with excommunication reserved to the Holy

See Religious who would administer Holy Communion to clerics or lay persons without special permission from their parish priest. (Gasparri, l. c., n. 1070, 1077.) Modern legislation and the Code, whilst maintaining the prerogatives of pastors in this matter, allow a broader and less exclusive interpretation of them.

1°. Communion in Church. (*a*) Permission to say Mass in any church or chapel normally implies permission to distribute Holy Communion during the Mass itself and also immediately before or immediately after, if the Mass is a private one, that is, not solemn, nor sung, nor a conventual Mass.

A Bishop might, however, for special reasons and in particular cases, prohibit the distribution of Holy Communion in private chapels. (Can. 869.)

Under the ancient law Religious might not give Holy Communion in their churches on Easter Sunday, but a decree of Nov. 28, 1912, had already removed that restriction and the Code makes no mention of it.

(*b*) Outside of Mass all priests attached to a church in which the Blessed Sacrament is preserved may distribute Holy Communion therein without further authorization; strangers may do likewise with the permission of the rector of the church explicitly granted or reasonably presumed.

135. 2°. Communion of the Sick. (*a*) Regularly Holy Communion should be brought to the sick publicly and with some solemnity, but the present law admits any reasonable cause as sufficient excuse from this obligation; hence there is no longer need in English-speaking countries

of a special Indult to retain the existing custom.

(b) The right and duty to bring publicly Holy Communion to the sick outside of the church belong to the pastor within his territory, even if the sick person happens to be a stranger.

Other priests may perform this public function only with the at least presumed consent of the pastor or of the Ordinary.

(c) To bring Holy Communion to the sick privately the only permission required by law is that of the priest who has the custody of the Blessed Sacrament in the church whence it is taken, the pastor in a parish church, the rector, the chaplain in Religious Communities of women, the superior of the house in Communities of men.

The legislator urges all who administer Holy Communion to the sick in a private manner to take great care that proper respect and reverence be shown to the Blessed Sacrament and to observe the prescriptions of the Holy See on the subject. According to some of them enacted by Benedict XIV (*Inter Omnigenas*, Feb. 2, 1744) and renewed in part by the S. Congregation of the Sacraments (Dec. 23, 1912; A. A. S., 1912, p. 725; N. R. T., Mars 1913, p. 179), the priest must always wear the stole under his dress or coat; he should place the pyxis in a burse appended by strings from the neck and carried on the breast. He should not go alone but accompanied by at least one person. In many places the custom has prevailed to dispense with this last condition.

In the sick-room the priest should administer Holy Communion vested in surplice and stole, which supposes the cassock. Theologians pro-

nounce it grave sin to give Communion without stole and surplice and a light one to omit either. (St. Alphonsus, vi, n. 241; Genicot, n. 187; Lehmkuhl, n. 187.) The Congregation having been asked whether the custom prevailing in some places of administering Communion to the sick with a stole alone without surplice might be allowed, answered negatively and commanded conforming to the rulings of the Roman Ritual. (Dec. 16, 1826.) The decree of Dec. 23, 1912, just referred to does not, however, explicitly mention the surplice. (*Nouvelle Revue Théologique*, Mars 1913, p. 181.)

136. 3°. Holy Viaticum. To bring Holy Viaticum to the sick, whether publicly or privately, belongs to the pastor of the place exclusively, except in a few cases specified by law; thus the Bishop receives Holy Viaticum from one of the dignitaries of the chapter (Can. 397); professed Religious or novices and other persons living in a clerical Religious house from the superior (Can. 514); in the house of Nuns with solemn vows they receive it from the ordinary confessor or the one who takes his place; in other lay communities from the pastor of the place or the chaplain to whom the Bishop has given full parochial rights. (Can. 514, § 3; 464, § 2.)

In a broad sense Viaticum means Communion administered to a person dangerously sick; in a stricter sense the term would designate only the Communion administered to a person in danger of death in compliance with the divine and ecclesiastical precept. Probably it is Holy Viaticum in this latter sense that the law reserves to the pastor. If the sick person wished to receive

the Holy Eucharist several times out of devotion during the same malady other priests might bring it to him as ordinary private Communion.

Under the former legislation Religious who administered Holy Viaticum to seculars without proper permission incurred excommunication; the Code has not maintained this penalty.

137. 4°. Rite. The priest ought to distribute Holy Communion either in unleavened or leavened bread, according to the law of his own rite.

In cases of necessity, however, and in the absence of a priest of the other rite, one of the Oriental rite who regularly uses leavened bread may administer Communion in unleavened bread and a priest of the Latin or of an Oriental rite who would ordinarily use unleavened bread may administer the Holy Eucharist in leavened bread; but each one must observe the rubrics proper to his own rite.

For the faithful Pius X, while recommending the avoidance of unwarranted promiscuity of rite, had granted permission, even for a mere motive of devotion, to receive Holy Communion in any rite and consequently in leavened or unleavened bread. (Sept. 14, 1912; A. A. S., p. 615.)

138. 5°. Communion Under One Kind. The practice for a long time common to the Eastern and Western Churches of Communion for the faithful under the species of wine as well as of bread fell into desuetude in the West during the course of the thirteenth and fourteenth centuries. The Councils of Constance (1415) and Trent afterwards approved the contrary custom, which had gradually prevailed, and gave it the force of a law.

For grave, although not dogmatic reasons, the Latin Church has ever since maintained that discipline and the withholding of the cup from the laity, in spite of the violent protests of the Hussites and the objections of Protestants as also against the demands of some princes. (Catholic Encyclopedia, Communion under Both Kinds; Dictionnaire de Théologie Catholique, Communion sous les Deux Espèces; Hedley, The Holy Eucharist, vi.)

The present law commands again administration of Holy Communion under the species of bread alone. Some theologians would not permit departure from this rule even to give the Holy Viaticum to a dying person, but others interpret it less strictly and would allow an exception in such a case. (Cappello, n. 451.)

ARTICLE II

THE RECIPIENT OF HOLY COMMUNION

(Can. 853-866.)

I. GENERAL PRINCIPLE.

Any person who by baptism has become a member of the Church possesses a right to participation in her sacraments, and unless divine or ecclesiastical law, written or customary, has taken that right away from him or suspended, limited, or restricted its exercise he may and should be given Holy Communion whenever he reasonably asks for it. The presumption stands in his favor

as enjoying the Christian privileges, except for some proof to the contrary.

II. COMMUNION OF CHILDREN.

(Martène, o. c., c. i, art. 15; c. iv, art. 10; Many, o. c., p. 294; L. Andrieux, *La Première Communion*, Paris, 1911; N. R. T., Nov., Dec. 1910; Jan., Feb. 1921; Canoniste Contemporain, Nov., Dec. 1910; Jan.-Mars 1911; *Ami du Clergé*, Jul. 27, 1911, p. 675; *Ecclesiastical Review*, 1910.)

139. 1. *Ancient Discipline.* 1°. As far back as the third century we find evidence of the practice, which must have existed even before, of giving the Holy Eucharist to infants immediately or shortly after baptism (St. Cyprian, *De Lapsis*, c. 9) and from time to time afterwards. They communicated only under the species of wine when younger and under the species of bread also when capable. The Council of Macon (585, Can. 6) directs pastors to bring the innocent members of their flock to church on Wednesdays or Fridays and have them consume the remnants of the consecrated bread.

2°. Infant Communion continued in use throughout the whole Church till the twelfth century. About that time, in the West, it commenced to grow rarer, like Communion under the species of wine generally and for similar reasons, that is, the desire of avoiding the danger of profanation or irreverence and other inconveniences. The Fourth Lateran Council (1215) supposes the general prevalence of the contrary custom, and indirectly gives it its sanction when in the decree on annual Communion it declares it obligatory only after one reaches the age of dis-

cretion. Likewise the Council of Trent positively rejected and condemned the theory of the necessity of Communion for children. A rubric of the Ritual explicitly pronounced it unlawful.

140. 3°. The term "age of discretion" used by the Council was at first universally understood as equivalent to "age of reason," which usually comes about the seventh year; but in the course of time some canonists introduced a distinction between age of discretion and age of reason, between the dispositions required for Communion and for confession, asking more for the former than for the latter. Thus the custom spread gradually in some countries during the fourteenth, fifteenth, and following centuries of postponing the first Communion of children till the age of ten, twelve, and fourteen, and this by general rule regardless of the qualifications of the individuals. Moreover, the pastor usually reserved to himself admission to first Communion as a matter pertaining to the external forum.

The Roman Church never adopted this practice and on several occasions the Holy See had expressed disapproval of it. Finally in 1910 the Congregation of the Sacraments, by order of Pope Pius X, published the Decree *Quam singulari*, which removed all doubts and put an end to controversies on the subject, authoritatively deciding that the age of discretion required both for confession and Communion is the time when the child begins to reason, that is, about the seventh year, and that from this time on the obligation of both confession and Communion exists for the child.

141. 2. *Present Law.* The Code confirms the

former discipline and on a few points completes the decree *Quam singulari*.

1°. It remains forbidden to give the Holy Eucharist to children who because of their tender age have as yet no knowledge and no desire of the sacrament, that is, who have not reached the age of discretion or reason, as the law understands it here.

This prohibition, as the Council of Trent declared, does not contain an even indirect condemnation of the practice in the ancient Church or of the present practice in the Oriental Churches, nor does it imply any doubt about the children's worthiness or capacity to profit by Holy Communion. But knowing, as the Council defined, that this sacrament is not necessary to children, who receive grace through baptism and can not lose it by sin before the age of reason, the Latin Church has deemed it advisable to withdraw the Holy Eucharist from them till they have such knowledge of it as will enable them to conceive some desire for it and approach it with respect, not exposing it to the danger of irreverence.

142. 2°. As soon as a child reaches the age of discretion or, as the present law defines it with great precision and clearness to leave no room for the former controversies, as soon as he is able to distinguish the Holy Eucharist from common food and to adore it reverently, that is, show in some, although very imperfect way, his religious respect for it, he fulfills the conditions strictly required in the present discipline of the Latin Church for admission to Holy Communion, and in danger of death nothing more would be demanded; he might and even should be given the Holy Viaticum.

3°. Outside of the danger of death the Church expects a somewhat fuller knowledge and more complete preparation, although not one which would cause long delays. The knowledge demanded, as the legislator explains, is not that of the whole Christian doctrine, but simply of the truths necessary for salvation by necessity of means: God, His Providence, the Trinity and the Incarnation, as far as a child can form an idea of these mysteries. His moral preparation will consist in that devotion and piety which he is capable of at that tender age. He can, therefore, prove ready for first Communion very soon after commencing to have the use of reason.

The rules given here for children apply also, although the legislator does not mention them, to grown-up persons deprived partially or entirely, permanently or temporarily, of the use of their mental powers.

143. 4°. The Lateran Council permitted postponement of paschal Communion by advice of the *proprius parochus*, which term canonists took to designate the confessor, although originally it may have meant the pastor, and during the thirteenth, fourteenth, and fifteenth centuries the confessor usually pronounces on the admission of children to first Holy Communion; parents give their opinion, but the decision rests with him. (St. Antoninus, *Summa Theologica*, P. III, tit. 4, c. 9; Andrieux, o. c., p. 200.) In the sixteenth century the influence of parents seems to have grown in importance; the Catechism of the Council of Trent names them first among those who have authority in this matter and the confessor only

second. We find this example followed by a number of canonists or theologians and by diocesan statutes; still, St. Charles Borromeo, for example, and many others speak only of the confessor in this connection.

In the seventeenth century we commence to meet with occasional mention of the pastor also, and a little later, when and wherever first Communion had come to mean exclusively first solemn Communion deferred to the age of twelve or fourteen, the pastor very commonly reserved to himself the admission of children to participation in this ceremony.

In Rome, however, and in other places also the rule laid down by the Roman Catechism had continued in force. The decree *Quam singulari* practically extended it to the whole Church.

The Code has adopted the same rule, only it names the confessor before the parents. "It belongs to the confessor and to the parents or guardians to judge of the fitness of children for first Communion."

This does not necessarily imply priority of right for the confessor, but perhaps indicates only the greater importance his intervention will usually have. The judgment to be pronounced here bears on the mental development of the child, his instruction and moral dispositions. The parents or guardians, who come in daily contact with him, are in the best position to observe his progress in regard to the first two points, but the confessor, when the child comes to him, will have a similar opportunity, and his training together with his experience will not infrequently enable him to cor-

rect the parents' judgment; in any case, he alone can pronounce on the merely internal dispositions and needs of the young candidate.

Practically parents will often leave the decision entirely in his hands, either through indifference or through regard for his office. Should a conflict arise, unless the parents be clearly unreasonable, he will not ordinarily admit to Holy Communion a child whom they deem too young for it; nor should parents send the child to the Holy Table against the advice of his confessor, but they might have him consult another confessor and abide by his decision. The law speaks of the intervention of the confessor and of the parents without necessarily requiring the consent of both; the decree *Quam singulari* in one place refers to the consent of parents or confessor. In reality, theoretically speaking, the child has an independent right to the Holy Eucharist as soon as he fulfills the conditions demanded by the Church for its reception, but in practice he needs assistance to exercise it, and this assistance should be given him according to the dictates of prudence. 144. 5°. The attribution to the parents and confessor in the decree *Quam singulari* of the admission of children to first Communion appeared to some liable to weaken the authority of the pastor in his parish and give occasion to abuses. In order, therefore, to calm those fears the Holy See authorized some Bishops to enact certain regulations for the application of the law which would safeguard the pastor's rights. The confessor was to let him know whom he had admitted, certify that the candidates fulfilled the conditions required, and hand over to him the written prom-

ise made by them and approved by the parents of continued attendance at Sunday school till the solemn first Communion.

The Code, after affirming again the competency of confessors and parents to pronounce on the fitness of children for Holy Communion, takes care likewise to proclaim and point out the rights and duties of pastors in this matter: it is their office to watch that children do not approach the Holy Table before they have attained the use of reason and without sufficient preparation, and he may examine them if he deems it prudent and opportune; he ought also to take care that children who have reached the age of discretion and possess the necessary dispositions should partake of this divine nourishment as soon as possible.

The law does not state nor imply that the confessor should submit beforehand the names of the candidates to the pastor or even notify him of what has been done. Nor should the pastor interfere with the action of the confessor without some special reason. He exercises general supervision over this as over other spiritual activities in the parish, and should he notice any irregularities he would have to correct them. If he suspects the existence of abuses he should make the proper investigation, and he may ask the doubtful candidates to submit to an examination, but the law recommends proceeding in this with prudence and discretion. He could not impose the obligation of an examination by general rule on all children as a condition for admission.

The pastor ought also to see to it that the first Communion of children be not deferred too long; but here he can only use persuasion: he has

no authority to command or compel any one.

In case of conflict between the pastor and the confessor or parents, the matter might be referred to the Ordinary. Should the opposition of the pastor appear to the parents clearly unreasonable, they might, strictly speaking, take their child to another church for Communion. The law is essentially the same for children as for adults; the pastor may not exclude them from the Holy Table except for some external and sufficiently certain unfitness.

The foregoing rules apply exclusively to private first Communion; the Code contains no provision regarding the solemn one, which remains a parochial function subject to local regulation.

III. DISPOSITIONS FOR COMMUNION. (Can. 855-858.)

145. 1. *External Worthiness.* 1°. Divine and ecclesiastical law command absolute exclusion from the Holy Table of all persons publicly unworthy of it, unless they have shown signs of conversion and amendment and repaired the scandal given to the community.

(a) The unworthiness is legally public when it has been formally confessed in court or pronounced by sentence of the judge; it is public in fact when it has become generally known. Some canonists do not consider as absolutely or strictly public the guilt known to the majority of the persons present, when, for example, the party who asks for Holy Communion is not known to the community generally. (Cappello, l. c., n. 74.) Public here has the sense of notorious in fact. Benedict XIV, who first formulated this law, used the two terms together, public and notorious, to

qualify the offence excluding from the sacraments. (*Ex omnibus*, Oct. 16, 1756.)

The Code names as publicly unworthy the excommunicated, interdicted, or notoriously infamous. Excommunication and personal interdict have that effect only after a condemnatory or declaratory sentence or after general divulgation (Can. 2232; Penal Legislation, n. 57); infamy must be notorious legally or in fact. (Can. 2197, 2293; Penal Legislation, n. 6, 161.) We may consider also as public sinners or publicly unworthy persons commonly known as living in concubinage or married outside of the Church invalidly, or belonging to a forbidden society, or engaged in gravely sinful occupations.

(b) When there is no scandal to repair, the mere fact of going to confession in presence of witnesses will ordinarily suffice as evidence of the necessary amendment, and often also approaching the Holy Table will be interpreted as an indication of conversion.

But when the case calls for the reparation of an injustice or a scandal, or for the removal of a proximate occasion of sin, fulfillment of these conditions must precede the administration of the Holy Eucharist.

146. 2°. Occult sinners, that is, those whose unworthiness although real does not come under the provision of the law just considered, may ask for the sacrament of the Holy Eucharist privately or publicly. In the first case the sacred minister should repel them, unless he knows that they have amended; but if they ask publicly and he can not pass them over without scandal he must give them Holy Communion. By acting otherwise he might

injure the sinner in his reputation, which he has not yet lost entirely; he might also turn away from the sacraments other people who would fear lest through levity, passion, or mistake the same humiliation should be inflicted on them.

In cases of doubt the exclusion should ordinarily not be pronounced, nor probably when the unworthiness, although public elsewhere, remains occult in the place and will likely continue so, at least for a good period of time.

Present conditions usually do not permit the same strict enforcement of the law as in times past and demand always great caution in its application.

147. 2. *State of Grace and Previous Reception of Absolution.* Holy Communion demands the state of grace regained regularly by absolution if one had lost it by mortal sin. As was said of the minister of the sacrifice, the faithful when conscious of a grievous fault must either go to confession and receive absolution or abstain from Holy Communion. Should they find both of these morally impossible they must make an act of perfect contrition, not simply of attrition, and then they may approach the Holy Table. (Cf. Can. 807, *supra*.)

(a) This impossibility of going to confession exists when access to a confessor offers really serious inconveniences because either of distance, sickness, rules, or other conditions, but this inconvenience should not be intrinsic to confession itself.

(b) It may occur for the faithful also, although more rarely than for priests, that they would find it a real hardship to stay away from

Holy Communion under certain circumstances. Authors give as an example the case of a person who would remember an unforgiven sin when he is already actually or equivalently at the altar rail. Some accept as a sufficient excuse the necessity of fulfilling the precept of paschal Communion, but they do not admit as valid such reasons as the embarrassment of a daily communicant who would have to abstain on a day when all the other members of the community approach the Holy Table.

3. *Previous Reception of Communion the Same Day.* The law of the Church does not permit the reception of Holy Communion twice on the same day except in two cases: in danger of death and in urgent necessity to save the Blessed Sacrament from profanation or irreverence. If a person finds himself in serious danger of death from whatever cause he may and is even exhorted to receive Holy Communion, although he may have communicated already that day.

148. 4. *Fasting.* 1°. General Rule. The law of the Eucharistic fast is the same for the faithful as for priests. It has the same origin, the same scope and binding force. (Cf. Can. 808.) It admits also of exceptions, but the Code mentions only two causes that would justify a person in good health to receive Holy Communion without fasting: the necessity of preserving the Sacred Species from profanation and danger of death.

2°. Concession for the Sick. Pope Benedict XIV quotes as rare occurrences a few examples of permission granted to sick persons to take a little liquid food before Holy Communion. In modern times these privileges had perhaps be-

come more frequent, still they remained exceptions till Pope Pius X, wishing to promote the practice of frequent Communion also among the infirm, issued a general decree authorizing all persons whom sickness had confined to their bed for a month without hope of prompt recovery, to receive Holy Communion once or twice a week if they lived in a house having the Blessed Sacrament or a private oratory, otherwise once or twice a month, after consulting their confessor, even though they have taken something by way of drink. (S. C. C., Dec. 7, 1906.)

The present law maintains this concession and even extends it, allowing all the sick without distinction to receive Communion once or twice a week and permitting the taking of medicine as well as liquid food. This privilege, granted by the legislator in a favorable matter, admits of broad interpretation, yet without extension beyond the natural and sufficiently clear meaning of its terms. (Can. 50, 67; Creusen, N. R. T., Jul. 1923, p. 368, contra, Cappello, n. 506, Vermeersch, n. 124.)

149. (a) It supposes infirmity resulting from sickness, old age, general debility, or some other cause and of such gravity that the patient is *decumbens*, habitually confined to his bed or to his room. The S. Congregation declared this condition verified in the case of persons whom the disease would not permit to lie in bed or who could sit up a few moments, *v. g.* two or three hours a day. (March 6, 1907.) Some canonists would not exclude from the privilege even those who could leave their bed without serious imprudence to go and receive Holy Communion

in a church near by. (Cappello, n. 506; Vermeersch, n. 124; cf. *Monitore Ecclesiastico*, Dec. 1916, p. 461.)

(b) This condition must have lasted for a month, it does not suffice to foresee that it will last that length of time and more.

A month can not mean here twenty-five or twenty-seven days, but between twenty-eight and thirty-one (Can. 32 § 2), to be reckoned according to the rules laid down in the Code. (Can. 34.) Thus, if the patient takes to bed on January 1st he may begin to use the privilege on the following February 2nd.

There must not be a morally certain prospect of recovery within a short time, that is, three or four days as generally understood. A merely probable hope of improvement need not be considered.

150. (c) Although the S. Congregation, in the decree of Dec. 7, 1906, and in the interpretation given of it March 6, 1907, refers to the impossibility of keeping the fast, the Code does not lay this down as a condition for the privilege; hence canonists have concluded that one, for example, who could, although not without some inconvenience, fast five days of the week might probably use the privilege for the other two days, provided he fulfills otherwise the necessary conditions. But the prudent confessor, whose advice the patient must take, would not recommend this to one who can fast without notable inconvenience, although he might not require a moral impossibility.

(d) The present law allows the taking of medicine as distinct from liquid food, which sup-

poses that it may be solid, but it must retain in the common estimation the nature of medicine or remedy for disease as usually understood and could not include all tonics and whatever may benefit one's health.

The H. O. had interpreted liquid nourishment, or the clause *per modum potus* in the ancient Indults, as including such drinks as coffee, milk, broth, etc., even though mixed with other substances like wheat-meal, ground toast, diluted eggs, provided the liquid form remained. (June 4, 1893; Sept. 7, 1897.) Some canonists would permit also raw eggs (Cappello, Vermeersch, l. c.), egg-nogs (Ballerini-Palmieri, IV, n. 730), and even sugar, candy, etc., as long as they melt in the mouth and are swallowed in the liquid form (Cappello, n. 507); others, however, object that sugar does not thereby become a drink and that people do not speak of it as being drunk but eaten. (Vermeersch, n. 124.)

(e) All who fulfill the conditions here enumerated, whether in private houses or in pious institutions, may receive Holy Communion without fasting once or twice a week, not more frequently, however, except with special Indult, which the Congregation of Sacraments grants sometimes even for daily Communion. The confessor could not extend the permission to three times a week; the text of the law does not admit of that interpretation.

IV. PRECEPT OF COMMUNION. (Can. 859-862.)

151. 1. *Origin.* The divine law demands that all adult Christians receive the Holy Eucharist several times in life and ecclesiastical law commands

them to receive it at least once a year at Easter.

The first Christians complied willingly with the divine precept, although the Fathers and early Synods occasionally complain of some negligence. As fervor diminished, the Council of Agde (506, Can. 18) and several other Councils afterwards made an effort to enforce three Communion annually, at Christmas, Easter—to which some Churches added Holy Thursday—and Pentecost. The enactment of Agde, adopted by several other Synods, passed into canonical collections and finally into the Decree of Gratian, and by custom or particular precept became law in large portions of the Western Church.

The Easter Communion, however, remained the principal one. In some places it was the only one which the faithful considered as obligatory either because the law of the four annual Communion had never been introduced or because it had fallen into desuetude. (A. Villien, History of the Commandments of the Church; IVth C.)

To render the discipline uniform and also to strengthen it the Lateran Council (1215) by formal law imposed on every Christian of either sex who had attained the age of discretion the obligation of receiving the Holy Eucharist at least once a year at Easter, unless exempted for a time and for reasonable motives by the *proprius sacerdos*, under pain of exclusion from church during life and of privation of Christian burial after death.

The Code has renewed the Lateran decree without change.

152. 2. *Subjects of the Law.* 1°. As said be-

fore, some canonists had come to interpret the age of discretion in the sense of age of puberty and concluded that the Lateran law commenced to bind children only when they reached the age of twelve or fourteen. The Congregation of the Sacraments had officially rejected that interpretation (*Quam singulari*, Aug. 8, 1910) and the Code now specifies that age of discretion means age of reason or, as said in another canon, the age when children can distinguish the Eucharistic bread from ordinary food and respectfully adore it. (Can. 854.) This comes ordinarily about the seventh year, but it may come earlier and when it does the law begins to bind at once, as the text itself clearly implies and as was explicitly declared by the Commission of Interpretation in answer to a question proposed by the Cardinal Archbishop of New York and the Bishop of Valleyfield, Canada. (Jan. 3, 1918.) Ecclesiastical laws do not usually bind children under seven even if they already have the full use of their reason, but this is an exception (Can. 12); the law is not purely ecclesiastical.

2°. Although the law of annual Communion applies to children as soon as they reach the age of discretion, it does not follow that they have to receive this sacrament immediately upon arriving at that state. They may wait till the following Easter, or it may suffice that they approach the Holy Table within the year; the more so as the moment when a child commences to enjoy the use of his reason can not be determined with perfect precision; and, moreover, when he becomes capable of receiving the Holy Eucharist there remains for him to prepare, to acquire the

knowledge of that sacrament and of the truths necessary by necessity of means required for its proper reception, and to develop the dispositions of respect and devotion demanded even of him.

3°. This preparation the children are unable to make of themselves, hence the obligation imposed upon them implies one also for those who have the responsibility of their religious training: first the parents or guardians, then the confessor, the instructors, and the pastor. These must teach them their duty and dispose them to fulfill it in due time.

153. 3. *Time of Fulfilment.* 1°. This law virtually contains a twofold command: one more general, more essential, partly divine and partly ecclesiastical—that of receiving Holy Communion at least once a year; the other more specific, relatively secondary, although grave, and purely ecclesiastical—that of making this annual Communion at Easter.

2°. Easter here, according to an ancient interpretation of the Lateran decree, does not mean Easter Sunday exclusively, but the period of time around that feast set aside for fulfilment of this duty. It regularly runs from Palm Sunday to Low Sunday. By common law at present Bishops may extend it for all the faithful of their diocese, and probably for strangers also, from the fourth Sunday in Lent to Trinity Sunday, if circumstances of place or person demand. In virtue of a special Indult, Bishops in the United States and other countries may add three weeks more and have the paschal period begin on the first Sunday in Lent.

3°. As under the former discipline, a prolongation of the time may be granted, for reasonable

causes in individual cases, by the *proprius sacerdos*, that is, according to the interpretation commonly received at present, by the pastor and also, as will occur more frequently, by the confessor. He will do so usually to allow the penitent to prepare better or perhaps to repair a scandal or for similar motives. Except for some special reason, the delay should be brief. The pastor or confessor has no authority to permit anticipation of the paschal Communion.

4°. One who would receive the Holy Eucharist before the opening of the paschal season would not fulfill the precept. Even if a person foresaw that he will not have an opportunity of going to Holy Communion during the regular time he does not have to anticipate, although it would be well for him to do so. He would have to anticipate if otherwise he would not have the opportunity of communicating within the year and fulfilling the divino-ecclesiastical precept.

5°. When a person has failed to make his Easter duty at the appointed time his obligation does not cease. He may not have to comply with it as soon as possible, but he should do so and go to Holy Communion at the latest before the end of the year, which is reckoned from Easter to Easter, although some permit following the civil division from January to January.

154. 4. *Place*. 1°. The Lateran Council had not specified any place for the reception of paschal Communion, but the discipline of the time clearly pointed to the parish church. Very close bonds then united the faithful to the parish priest and church. It was the pastor who as the real *sacerdos proprius* of the Council had received

authority to advise in this matter, and he also had to apply the sanctions in cases of disobedience, exclusion from church and refusal of Christian burial. It is not surprising, then, to find particular Councils commanding the faithful to go to their parish church and clergy for the paschal Communion. By custom and the explicit or implicit approval of the Holy See, this became a general obligation.

2°. The present law has not maintained that discipline. It favors reception of Communion at Easter in one's own parish, and asks that it be recommended to the faithful, but does not impose it as an obligation.

Those who make their Easter duty outside of their own parish are only requested to notify their parish priest. This request has the form of a command and must impose an obligation but not a grave one, as the matter does not call for it. (Vermeersch, n. 128.) Some see in this a mere counsel. (Cappello, l. c., n. 475.)

This rule would not apply to those who would receive Holy Communion at Easter in some church or chapel within the parish although not in the parish church.

155. 5. *Dispositions Required.* The legislator explicitly states that one does not fulfill the Easter duty by a sacrilegious Communion. Innocent XI had condemned the contrary doctrine.

6. *Communion on Holy Thursday.* The obligation of receiving Communion on Holy Thursday as well as on Easter Sunday, introduced in a number of places by custom or local legislation, never became general. It had lost ground already at the time of the Lateran Council and

some time after it practically ceased to exist for the laity. For ecclesiastics ancient liturgical rules maintained it at least for those connected with cathedral or collegiate churches, and according to some for all such as were attached to churches that had a solemn high or conventual Mass on Holy Thursday. (Cappello, n. 479; Gasparri, n. 1159.)

The Code does not abrogate liturgical laws, and these remain in force wherever they have not fallen into disuse. The common law only declares it fitting that on Holy Thursday all the clergy, even the priests who on that day abstain from offering the sacrifice, partake of Christ's Sacred Body at the solemn or conventual Mass.

V. FREQUENT COMMUNION. (Can. 863.)

156. 1. The frequency of Communion among the faithful has varied with the times and places. The first Christians apparently partook of the Holy Eucharist whenever they assisted at its consecration, which took place once a week. In the days of St. Cyprian the Christians of Africa communicated every day and they continued in this practice during the fourth and fifth centuries, while at Constantinople about this time, according to St. John Chrysostom, many went to Holy Communion only two or three times a year. Decrees of Councils in the sixth, seventh, and following centuries reveal the prevalence of a similar custom in Gaul, Germany, England, and other countries. (*Dictionnaire de Théologie Catholique, Communion Fréquente*; Labauche, *The Three Sacraments of Initiation*, p. 403.)

St. Thomas strongly advocated frequent and daily Communion in the thirteenth century, without awakening much sympathy for it; the biographers of his contemporary and friend St. Louis tell us that he approached the Holy Table only five or six times a year. We read likewise that the saints of the fifteenth century usually communicated only once a week. (Labauche, l. c., p. 405; Dalgairns, Holy Communion.)

The Council of Trent would have wished to revive the ancient practice of Communion at every Mass heard, but its appeal remained unheeded. Among the theologians that came after it there existed a difference of opinion regarding the dispositions required for frequent Communion. Some held that strictly-speaking the state of grace sufficed for it; others, like St. Francis de Sales, demanded freedom from affection to venial sin; others, again, imbued with Jansenistic principles, laid down severer conditions. Controversies on the subject lasted till the beginning of the twentieth century, when Pope Pius X put an end to them by the Decree *Sacra Tridentina Synodus* of Dec. 20, 1905, in which he gave the following rules:

(a) No one who is in the state of grace and approaches the Holy Table with a right intention can lawfully be hindered from it.

(b) A right intention consists in approaching the Holy Table not out of routine or vainglory or human respect, but for the purpose of pleasing God, of being more closely united with Him by charity.

(c) Freedom from venial sin and affection

thereto, although most desirable, is not a condition for, but will rather be the fruit of, frequent Communion.

(*d*) To be more beneficial Communion should be preceded by a careful preparation and followed by a suitable thanksgiving.

(*e*) Prudence demands that the practice of frequent Communion should be submitted to the judgment of the confessor, who is directed, as well as are pastors and preachers, to encourage and promote it with great zeal.

2. By its very nature this matter lies outside of the scope of formal legislation and the Code contains no direct enactment regarding it; all it asks is that the faithful be exhorted and urged to partake frequently and even daily of the Eucharistic bread in conformity with the norms laid down in the pontifical decrees; when they assist at Mass they should communicate not only spiritually but sacramentally, provided they possess the necessary dispositions, in accordance with the practice of the first Christians.

VI. HOLY VIATICUM. (Can. 864-865.)

157. 1. When in danger of death the faithful are bound by divine law to receive Holy Communion. Whether the danger arises from intrinsic causes, like disease, old age, childbirth, or from extrinsic ones like a condemnation to death, an imminent battle, the obligation exists the moment the danger is real and morally speaking proximate. (Gasparri, 1147; Noldin, n. 135.)

2. Even those who already have received Holy Communion on that day would be permitted and

are advised to receive it again should they find themselves in danger of death. They would likewise be dispensed from fasting. The Code explicitly affirms the lawfulness but not the obligation of a second Communion under these circumstances, thus settling an old controversy.

3. As long as the danger lasts, Holy Viaticum may be administered several times on distinct days; it is even advisable to do so as frequently as the confessor will prudently permit it and, therefore, every day if he deems this advisable. Some ancient theologians permitted one to receive Holy Viaticum or Communion without fasting only once a week.

4. Holy Viaticum ought to be brought to the sick without too much delay, and those who have charge of souls should take great care that the sick receive it while fully conscious.

VII. RITE OF HOLY COMMUNION. (Can. 866.)

158. In accordance with the rules laid down by Benedict XIV, Leo XIII, and Pius X, the Code allows all the faithful to receive Holy Communion in any Catholic rite, without any other motive than the satisfaction of their devotion.

It is recommended, however, that every Catholic receive the paschal Communion in his own rite.

The dying should receive Holy Viaticum in their own rite, except in case of necessity, when they may receive it in any rite.

ARTICLE III

TIME AND PLACE FOR THE DISTRIBUTION
OF HOLY COMMUNION

(Can. 867-869.)

159. 1. *Time.* 1°. Days. In the present discipline of the Latin Church it is lawful to distribute Holy Communion any day of the year with only a few restrictions as to two or three days.

(a) On Good Friday it is only permitted to give Holy Viaticum to the sick; this by virtue of a custom which dates back, in the Roman Church, to the tenth century. Having become general through the West, it received the sanction of the Holy See, particularly of Pope Innocent XI (Feb. 12, 1679), and now forms part of the common law.

The concession made here in favor of the sick applies only to Holy Viaticum understood in the strict sense, not to the Communions of devotion which they may receive even without fasting.

(b) On Holy Saturday Holy Communion may be administered to the faithful, but only either during Mass or immediately after.

The legislator has here settled an old controversy in the favorable sense, but still the distribution of Communion on this day remains restricted by certain conditions. The words of the concession seem to imply clearly that it is permitted only during Mass or in close connection with it, not before, but immediately or soon after, which we may probably interpret within five or ten min-

utes, as long as the moral connection exists. Holy Communion, then, may not be distributed on Holy Saturday in churches which did not have Mass; the contrary opinion lacks solid foundation. (*Ephemerides Liturgicæ*, Jul., 1919.)

(c) On Holy Thursday Communion is distributed at the solemn High Mass; it may be distributed also before, and at private Masses when these are permitted; but it should not be distributed after the solemn morning service in the church in which it was held nor would the spirit of the liturgy favor this distribution in others.

Religious are not forbidden any longer to give Holy Communion in their churches on Easter Sunday or on Holy Thursday.

160. 2°. Hour. (a) Holy Viaticum may be administered at any hour of the day or night. This rule would seem to apply even when the condition of the patient would, strictly-speaking, permit delay and the bringing of Communion in day time, since the law contains no restrictions.

(b) Outside of the cases of danger of death Holy Communion should be distributed only during those hours of the day when the law permits the celebration of Mass, unless one has a reasonable cause for acting otherwise.

It would require, then, some reason to give Communion more than one hour before dawn or after midday, but the law does not demand a very grave nor even a grave one; any reasonable, even light, cause suffices, whether it exists on the part of the minister or of the recipient.

This rule evidently implies that whenever circumstances or a particular Indult or special pro-

visions of the law permit the celebration of Mass earlier or later than the usual hour, they justify likewise anticipation or postponement of Communion, and that authorization for the one contains authorization for the other.

Some would make an exception for the Midnight Mass on Christmas day, at which the Congregation of Rites had by several decrees forbidden the distribution of Communion, not for liturgical reasons, as none could exist to prevent the faithful from receiving their Lord on that day at that hour, but for disciplinary ones, because of the incongruous abuses to which the practice had given occasion, *propter gravia quæ inde oriebantur absurda*, says Benedict XIV. (De Sacrosancto Missæ Sacrificio, Lib. III, c. xviii, n. 13.) They argue that since the Code grants explicit permission for the distribution of Communion at the Midnight Mass in pious houses (Can. 821, § 2, 3), but not at the Mass in parish or conventual churches, the ancient prohibition must remain in force under the new law, which in fact does not ordinarily affect liturgical rules. Other canonists, however, consider this insufficient to prove the existence of an exception to a principle expressed in absolute terms.

The Holy See has indirectly at least confirmed this interpretation: to a request presented by parish priests for faculties to distribute Communion at the Midnight Mass the Congregation of the Sacraments replied that they did not need them. (Monitore Ecclesiastico, 1920, p. 381.) Again in 1919 the Bishop of Tuguegarao, in the Philippines, asked the Commission for the Interpretation of the Code whether by virtue of Can. 867,

§ 4 and without Apostolic Indult it was permitted to give Communion to the faithful at the Midnight Mass on Christmas day whenever in the estimation of the Ordinary there was a reasonable cause for doing so. On July 10, 1919 the President of the Commission gave an affirmative answer. This implies that the canon under consideration applies also to the Midnight Mass, and this with sufficient clearness not to require a formal discussion by the Commission itself. The reasonable cause mentioned in the Bishop's question will exist practically whenever the Ordinary will not have special reasons to fear abuses or disorders. (*Monitore Ecclesiastico*, Dic. 1922, p. 371; *Gen.* 1924, p. 21; *Ephemerides Liturgicæ*, Feb. 1921, p. 69; *Vermeersch*, n. 111.)

161. 2. *Place.* (a) The present law explicitly allows the distribution of Communion wherever Mass is lawfully celebrated, therefore in churches, chapels, private oratories, even on Easter Sunday, since no exception is made, in the open air, etc. No Indult is required any longer for the distribution of Communion in domestic chapels. The Ordinary might forbid this in particular cases and for special reasons, but not by general decree or without cause.

(b) A priest who distributes Communion during Mass should not bring it to persons so distant from the altar that he loses sight of it.

Some canonists would consider the priest as morally in sight of the altar although a pillar, for example, would hide it from him, as long as he does not go out of the church or chapel. (*Capello*, n. 443.)

The Congregation of Rites even approved the

practice existing in some hospitals of bringing during Mass Communion to the sick in rooms close to the sanctuary, although the priest would lose sight of the altar, provided his voice would be heard. (Feb. 7, 174, n. 5574; Gasparri, n. 1087; Vermeersch, n. 138.)

TITLE IV.

THE SACRAMENT OF PENANCE

(Can. 870-936.)

(Génicot-Salsman, *Theologiæ Moralis Institutiones*, 1921; Noldin, *Summa Theologiæ Moralis, de Sacramentis*, 1921; Lehmkuhl, *Theologia Moralis*; Tanquerey, *Synopsis Theologiæ Moralis, De Pœnitentia*, 1921; Vermeersch, o. c., n. 139; Blat, o. c., p. 205; Cocchi, *Commentarium in Codicem Juris Canonici, Lib. III, P. I^a, De Sacramentis*, 1924; Cappello, *Tractatus Canonico-Moralis, de Sacramentis*, vol. ii, *De Pœnitentia, Ordine et Extrema Unctione*, 1924.)

PRELIMINARY NOTIONS

162. After an introductory canon containing the definition of the Sacrament of Penance and the dogmatic principles which serve as a foundation for the canonical legislation, the Code treats in five successive chapters of the Minister of Penance, the Reservation of Sins, the Recipient of Penance, the Place for its Administration, and Indulgences.

Penance is defined as a sacrament by which, through absolution by the legitimate minister, a Christian receives, if properly disposed, the remission of sins committed after baptism.

Theologians explain in detail the nature of the dispositions required in the subject, which consist essentially in humble and sincere avowal of sin,

sorrow for committing it, firm purpose of amendment, and willingness to make due reparation.

Of special interest to canonists is the peculiar character of this sacrament, to which Our Lord gave the form of judicial process. Its minister purifies souls from sin by an act of absolution, and as the Council of Trent defined, this absolution is not a mere declaration of what has taken place as effect of other causes, but a real, efficacious juridical sentence actually freeing the sinner from guilt. (Sess. XIV, c. 9.)

CHAPTER I

THE MINISTER OF THE SACRAMENT OF PENANCE

(Can. 871-892.)

I. POWER REQUIRED. (Can. 871, 872.)

163. 1. *Power of Order.* Only duly-ordained priests can validly administer the sacrament of penance.

Some heretics, like the Montanists in the early Church and later on the Waldenses and the Wyclifites, attributed the power of remitting sin to more spiritual members of the community or to some endowed with this special gift or *charisma*. The Church condemned their doctrine.

In the Middle Ages a few orthodox writers expressed the opinion that in cases of necessity deacons and even inferior clerics might act as extraordinary ministers of penance, receive the confession of sins, and perhaps give some sort of absolution, the efficacy of which they did not de-

fine. Examples of this were found in the writings of ancient Fathers, who refer to deacons as administering penance and reconciling sinners. (St. Cyprian, *De Lapsis*, n. 12.) These texts, however, more likely refer to external reconciliation with the Church, not to absolution from sin. At present, too, a cleric in Minor Orders could receive delegation to absolve from a censure.

Several of the great scholastic theologians, Peter Lombard, Albertus Magnus, and St. Thomas, advised the faithful, when in danger of death and unable to have a priest, to confess their sins even to a layman and thus obtain forgiveness, not that they thought the layman could give absolution, they expressly state the contrary, but because of the exaggerated idea they had formed of the efficacy of mere avowal of offences, probably under the influence of a text falsely ascribed to St. Augustine. (*Dictionnaire de Théologie Catholique*, I, p. 183-189; Laurain, *De l'Intervention des Laiques, des Diacones et des Abbesses dans l'Administration de la Pénitence*, p. 68; Tanqueray, l. c., n. 71-82.)

164. 2. *Power of Jurisdiction.* Because of the judicial character of this sacrament the power of Order does not suffice even for its valid administration. A judge must possess jurisdiction, that is, not necessarily legislative, but judicial power to apply the law to particular cases, pronounce on the guilt of culprits, and punish or free them. He must have authority in the particular matter he deals with, which for the confessor means in all that affects consciences and their relations with God, but not what pertains to relations of an external character and belongs to

the external as distinct from the internal forum.

He must also have jurisdiction over the culprits, that is, he must have subjects over whom to exercise his powers.

His jurisdiction may be ordinary and attached by law to his office or delegated and communicated to him by one who has ordinary jurisdiction.

II. ORDINARY JURISDICTION. (Can. 873.)

165. 1. *By Whom Possessed.* 1°. Besides the Sovereign Pontiff, who has the plenitude of power in the Church, Cardinals under the present discipline possess for the administration of the sacrament of penance universal ordinary jurisdiction extending to all places, all persons, Religious of either sex as well as secular, and all matters excepting only the censures reserved to the Holy See in a very special manner and those incurred by violation of the secret of the Holy Office. (Can. 239.) Although ordinary, this jurisdiction partakes of the nature of a personal privilege, as declared by the Consistorial Congregation, Ap. 25, 1918, and can not be delegated, as the Code itself implies. (Can. 239, § 1, 2°, 3°.)

2°. Local Ordinaries possess this same ordinary jurisdiction within the limits of their territory, where they can absolve all who come to them; outside of it they can absolve their own subjects, but them alone.

The canon penitentiary in cathedral and collegiate churches has likewise universal, ordinary jurisdiction for hearing confessions in the diocese, but he can not delegate it. (Can. 401.)

3°. Pastors have ordinary jurisdiction in their

parish and they may absolve their parishioners everywhere.

The same principle applies to all who take the place of, or whom the law assimilates to, pastors, like the *vicarii curati*, *æconomi*, *substituti*, but not the *vicarii coöperatores* or ordinary curates. (Can. 471-474.)

4°. Exempt Religious Superiors have ordinary jurisdiction over their own subjects, on the conditions and to the extent determined by their rules. 166. 2. *Cessation*. Ordinary jurisdiction ceases by the loss of the office to which it is attached and by excommunication, suspension from office and particular, personal interdict, but only after condemnatory or declaratory sentence, not by the mere fact of incurring a censure *latæ sententiæ* without any intervention of a superior either to inflict it or to declare that it has been fallen under.

III. DELEGATED JURISDICTION. (Can. 874, 875.)

167. As a general rule those who possess ordinary jurisdiction can delegate it; but this rule admits of exceptions. (Can. 199, § 1.)

1. As said already, Cardinals and canons penitentiary can not delegate their jurisdiction although it is ordinary.

2. Local Ordinaries can delegate and the law explicitly states that they do grant jurisdiction to all priests without distinction, whether secular or regular even exempt, for hearing the confessions of any secular or Religious person in their territory, although Religious Superiors may delegate also for the confessions of members of their Order.

(a) To absolve even exempt Religious a secular priest receives, therefore, his powers, not from the Holy See, nor necessarily from their superior, although he may receive them from him also, but from the Ordinary in whose territory the confession is heard. It must, then, have the diocesan restrictions.

(b) Religious, even those who enjoy the privilege of exemption, may receive from the local Ordinary power to absolve members of their, or another, Order, and they must receive it from him for the absolution of all secular penitents, even at the time of missions or on the occasion of a jubilee; the law does not make any distinction. It is now certain that this power does not come to any of them from the Holy See by common law.

(c) The legislator only asks what respect for regular discipline demands, namely, that Religious who receive jurisdiction for confessions from the local Ordinary should not use it without the permission, at least presumed, of their superior. Neglect of this formality would not, however, affect the validity of absolutions given by them.

(d) For similar reasons local Ordinaries should not grant habitual faculties for confessions to Religious except on presentation by their superiors, and on the other hand they should not without grave reasons refuse them to those whom their superiors present. They always may if they wish examine the candidates to ascertain their fitness, in accordance with the provisions of Can. 877. Should they refuse the faculties, even unreasonably, the petitioner must abstain from hear-

ing confessions. Popes Boniface VIII and John XXII, in their endeavor to settle the controversies between Bishops and Religious, particularly of the Mendicant Orders, had decided that in such cases the Holy See would grant jurisdiction; but the Council of Trent abrogated those provisions. (Sess. XXIII, c. 15.)

168. 3. Pastors before the Council of Trent could delegate their power of hearing confessions, and after the Council also, although the necessity of episcopal approbation had rendered their privilege of little avail.

The Code does not explicitly take away from them that faculty of delegating which usually goes with ordinary jurisdiction, but neither does it mention them as among those who can give delegated power for confessions. The first commentators interpreted this silence some in favor of, others against, parish priests. The Commission of Interpretation officially decided that pastors, parochial vicars, or other priests having a general delegation can not, without special mandate from the Ordinary, grant faculties for confessions to other priests whether secular or regular. (Oct. 16, 1919; A. A. S., p. 477.)

4. Religious Superiors in exempt Orders of clerics may, on the conditions laid down in their constitutions, grant not only to priests of their own Order but also to those belonging to other Orders and to secular priests, faculties for hearing the confessions of their own subjects, which includes the professed Religious of the Order, the novices and all other persons who dwell day and night in the convent or monastery, such as servants, pupils, guests, or patients. (Can. 514.)

Jurisdiction from the local Ordinary would not be needed, therefore, for a Franciscan to absolve a Dominican.

Formerly Religious Superiors could delegate jurisdiction also for the confessions of seculars, but this power had been practically withdrawn and the Code does not make any mention of it.

In exempt lay institutes the superior has the right to present the confessor, but the jurisdiction has to come from the Ordinary of the place in which the Religious house is located. The latter should not refuse faculties when the candidate possesses the required qualifications.

IV. SPECIAL JURISDICTION FOR CONFESSIONS OF NUNS. (Can. 876.)

169. 1. Gregory XV, in the Const. *Inscrutabili* (Feb. 5, 1622, § 5), decreed that all confessors, whether secular or regular, should have the approval of the Ordinary of the place to hear the confessions of Nuns, even of those subject to them, and Clement XI explained that general approval for confessions of women did not suffice for this, but a special one was necessary and one granted for the particular community, as a confessor appointed for one convent could not validly hear confessions in another. (*Superna*, June 22, 1670.)

Originally this legislation affected only the *moniales* or Religious with solemn vows, but gradually in many places particular statutes had extended its provisions to Sisters with simple vows. (III Balt. Council, n. 96.)

2. The present law, sanctioning this develop-

ment of the discipline, enacts that to hear validly and lawfully the confessions of any female Religious and their novices all confessors, both secular and regular, must receive a special jurisdiction, whatever be their rank or office.

(a) No distinction is made between Religious with simple or with solemn vows, but rather excluded; henceforth the rule is the same for all. It applies to their novices, but not to postulants nor to women who may live in the convent as servants, pupils, etc.

(b) The legislator explicitly abrogates any contrary privilege or particular law that might exist in some places. He does not mention customs.

(c) The special jurisdiction required here does not differ in kind from any other, but it must be granted particularly for this purpose, as by this disposition of law it is not included in the general power given for the confession of the faithful or of women.

(d) Even pastors in their parish, Prelates regular, canons penitentiary, and Bishops themselves outside of their diocese need this special delegation. Cardinals have by common law power to hear the confessions of all Religious in the whole Church. (Can. 239, § 1, n. 1.)

170. 3. Exceptions. (a) If for the peace of her conscience a Sister goes to any confessor approved by the local Ordinary for the confessions of women her confession, made in any church or oratory even semi-public or in any other place legitimately set apart for the confessions of women (*Com. Inter.*, Nov. 2, 1920), is both valid and licit. (Can. 522.)

By virtue of this concession a Sister may go to confession, outside of her convent, to any priest having ordinary faculties; in the convent she may take advantage of the presence of any priest and make her confession to him in the chapel or in any other place legitimately used for that purpose.

She must have a reasonable cause for thus departing from the common order; but according to good canonists this is not required for the validity of the confession thus made, and for the lawfulness any reasonable motive will suffice.

The confession should regularly be made in a church or chapel, but this again, according to good authorities, is not required for its validity. (Vermeersch-Creusen, *Summa Novi Juris Canonici*, n. 189; N. R. T., Jan. 1921, Feb. 1921, p. 57; Juil. 1922; Nov. 1923, p. 491; *Commentarium pro Religiosis*, Jan. 1921, p. 13; Nov. 1921, p. 335; *Eccl. Rev.*, Oct. 1919, p. 446; *Irish Ecclesiastical Record*, 1919, p. 239, 414.)

(b) A Sister seriously ill, though not in danger of death, may call any approved priest of the diocese to make her confession to him, and she may repeat this as often as she desires while the illness lasts. (Can. 523.)

171. 4. The Ordinary of the place in which the Religious house is located gives that special jurisdiction for the confessions of the Religious and the novices. When the house is subject to a Regular Superior the latter has the right to present the confessor, but the Ordinary must give the approbation and jurisdiction. He should not refuse it when the candidate possesses the necessary qualifications.

V. CONCESSION OF JURISDICTION. (Can. 877-879.)

172. 1. *Previous Examination.* (a) Before the Council of Trent Religious Superiors and also parish priests could delegate jurisdiction without the Bishop's intervention. This gave occasion to numerous abuses and not infrequently led to conflicts of jurisdiction. The Council, therefore, decreed that henceforth no priest, whether secular or regular, could receive jurisdiction for the confessions of secular persons and even of priests without previously obtaining the approbation of the local Ordinary, unless he held a parochial benefice. (Sess. XXIII, c. 15.)

This approbation or official declaration of fitness differed in itself from the concession of jurisdiction, but in practice Bishops had come usually to give both at the same time.

(b) As under the present law the local Ordinary alone can grant jurisdiction in his territory for hearing the confessions of secular persons, the reason for demanding previous and distinct episcopal approbation for the valid concession of jurisdiction no longer existed, and the Code does not mention it.

But the obligation remains for local Ordinaries and Religious Superiors who grant jurisdiction or simply permission for the hearing of confessions to ascertain the fitness of those whom they choose for this office. This supposes intellectual and moral qualifications, theological learning, prudence, and genuine piety. The normal way of finding out whether candidates possess the required learning is an examination on the matters which confessors must know, and the law supposes that superiors regularly use this means. It per-

mits dispensing with it only in the case of priests whose theological competency is otherwise known. Academic degrees do not always constitute a sufficient guarantee of proper preparation for the ministry of confession.

(c) Even after confessors have obtained the necessary jurisdiction or permission and perhaps exercised their functions for some time, should the Ordinary or superior prudently judge that probably they no longer possess the required knowledge, because, for example, having neglected their studies they forgot what they had known before or because the knowledge of which they had given evidence would not suffice under new conditions, he may submit them to another examination. These rules concern chiefly the concession of delegated jurisdiction, but, as explicitly stated here, should there be reasons to doubt the actual fitness for the ministry of confession, of a parish priest or penitentiary, they too might be obliged to take an examination, even after several years in the office.

(d) Exempt Religious, when they need jurisdiction from the local Ordinary, have to submit to the same law as secular priests and take an examination if asked to do so, not only once but several times; if, for example, jurisdiction granted for a fixed number of years had to be renewed, or if, after granting it absolutely, the Bishop had positive reasons to doubt that the confessor remains qualified for his functions.

173. 2. *Limitations.* The Ordinary may give jurisdiction or permission for hearing confessions with certain restrictions; he may grant faculties to a priest to hear the confessions of men and not

those of women, to hear confessions in some places and not in others, or to exercise this ministry for only a few years or months; he may restrict the powers as to the matter by means of reservations. The law warns him, however, not to multiply these restrictions too much or without reasonable cause.

3. *Mode of Concession.* (a) For the validity of the confessions the jurisdiction must be granted expressly in writing or by word of mouth. Tacit concession would not suffice, nor the merely presumed or interpretative one. Canonists consider it sufficiently explicit in case, for example, the diocesan statutes would declare that any one whom the examiners pronounce fit obtains the jurisdiction *ipso facto* and a candidate would be informed that they have found him duly qualified. (Blat, l. c., p. 225.)

It is generally held that before he can validly use delegated jurisdiction a priest must have received notification of its concession. Some canonists, however, believe that when jurisdiction has been applied for and likely granted, if the petitioner before receiving any notification acts on that probability, his action will be valid if the concession proves real and lawful, when circumstances would not easily permit delay. (Vermeersch, n. 149.)

(b) Jurisdiction ought always to be granted gratuitously.

VI. WITHDRAWAL OF JURISDICTION OR PERMISSION TO HEAR CONFESSIONS. (Can. 880.)

174. 1. Except for grave reasons, of which they remain the judges, local Ordinaries and Religious

Superiors may not withdraw permanently or temporarily the jurisdiction or permission to hear confessions they have once granted. The law does not, however, contain any annulling clause implying that absence of such grave reason would invalidate the act.

2. For any reasons which they consider grave and sufficient, Ordinaries, local or personal, may take away the delegated jurisdiction or the permission to hear confessions which they have given; they may even in such cases suspend from the exercise of their functions of confessor a pastor and a canon penitentiary, although they possess ordinary jurisdiction. These may, if they deem the sentence illegitimate, have recourse to the Holy See, but only *in devolutive*; meanwhile they must submit to the decree of the Ordinary.

Superiors can take away only the jurisdiction or permission which they or their predecessors in office had granted. Withdrawal of jurisdiction by a Religious Superior would not prevent his subject from exercising validly, if not lawfully, the jurisdiction he has received from the local Ordinary. (Cong. of Bishops and Religious, March 2, 1866; Blat, p. 227.)

3. In any case, even if grave reasons existed for doing so, a Bishop may not without first consulting the Holy See pronounce a general suspension against all the confessors in a *domus formata*, i. e., in a community consisting of at least six professed Religious four of whom are priests.

He might take away faculties from all priests in a smaller community without that recourse to Rome; in a *domus formata* he might also suspend them all one after the other. Consulting the

Holy See is prescribed only for withdrawing all faculties at the same time, by one and the same act morally speaking; nor is this formality required for the validity of the act.

VII. SUBJECTS OF PENITENTIAL JURISDICTION.

(Can. 881-884.)

175. 1. *Strangers.* (a) Any confessor, whether secular or regular, who possesses ordinary or delegated jurisdiction in a certain place, can absolve validly any penitents who come to his tribunal, not only those who have their residence in that place but also outsiders belonging to another parish or diocese or having no domicile anywhere. This includes also Catholics of any of the Oriental rites.

There is no need, as some ancient theologians thought, for the absolution of strangers or transients, of recourse to a presumed delegation from the Holy See or of their respective Bishops. By common law a confessor's jurisdiction is territorial and extends to all persons who come to him within the territory assigned to him.

(b) If he possesses ordinary jurisdiction the confessor can exercise it also outside of his own territory and absolve his subjects anywhere. By explicit disposition of the law, penitential jurisdiction, although in a sense judicial, is assimilated in this respect to voluntary jurisdiction. (Can. 201, § 3.)

176. 2. *Persons in Danger of Death.* The Council of Trent, in a decree confirmed by several Popes and now by the Code, granted to all priests powers to absolve any person in danger of death from all sins and censures. (Sess. XIV, c. 7.)

(a) The danger must be a serious, yet not necessarily an immediate and absolutely certain, one. To indicate this more clearly, the Code has substituted the term *periculum* for *articulus mortis* used by the Council. Theologians had interpreted the latter expression, not in the strict sense of point of death, but as equivalent to *periculum*, or danger of death.

It does not matter what cause the danger arises from, whether intrinsic or extrinsic. The S. Penitentiary declared, May 20, 1915, that all soldiers sent to the battle front were in that danger, which permitted them to receive absolution from any priest. (A. A. S., 1915, p. 282.)

(b) Under such circumstances all priests, even those who would otherwise have no jurisdiction and in presence of one who has, can absolve both validly and lawfully any person, not excluding Religious and novices, from any sin, whether reserved or not, and from any censure, whether *a jure* or *ab homine*, whether reserved to the Ordinary or to the Holy See, in a simple, special, or most special manner; whether occult, public, or notorious.

Ordinarily priests under censure may not administer the sacraments except upon reasonable request from the faithful. When in danger of death the faithful may ask for absolution even from an *excommunicatus vitandus*. (Can. 2261, § 3.)

Regularly also the faithful should abstain from communicating *in divinis* with heretics or schismatics by receiving the sacraments at their hands.

Some canonists would apply these rules even to cases of danger of death; the Code, however,

affirms absolutely, without restrictions, that all priests without distinction, even one who has no jurisdiction in presence of one who has, which some ancient theologians doubted, can absolve, not only validly, which all admit, but also lawfully, a person in danger of death, from all sins and censures. It makes one exception, but only one at least explicitly, which would seem to exclude any other: a confessor does not lawfully absolve his accomplice *in peccato turpi* even when in danger of death, if some other priest is morally and practically-speaking available. (Vermeersch, l. c., n. 152.)

(c) A penitent absolved when in danger of death by a confessor without special faculties from a censure *ab homine* must on recovery or when the danger ceases apply to the superior who inflicted the censure to receive his admonitions and mandates. If he was absolved under the same circumstances from censures reserved to the Holy See in a most special manner, he must after recovery, under pain of falling again under the same censure, apply within a month to the Holy Penitentiary or to the Ordinary, or to another superior having power to absolve from such penalties, and abide by his orders. He may appear before the superior personally or write to him or have his confessor write in his place. (Can. 2252; Penal Legislation, n. 94.)

177. 3. *Travelers on Sea.* (a) Originally faculties for hearing confessions on ship-board were granted by the Congregation of Propaganda to missionaries. When ocean trips had become more frequent and others besides missionaries undertook them the Holy Office authorized the

Bishops of the place of embarkation to grant jurisdiction to priests, permitting them validly and lawfully to hear the confession of their companions during the voyage till they would reach a place subject to the authority of another Ordinary. (March 17, 1869.)

A decree of April 9, 1900, allowed all priests approved by their own Ordinary to hear confessions on ship-board during the whole voyage, even though they would pass through or stop off for a while in a different Ordinary's territory.

Still further concessions were made a little later. Traveling priests could now obtain their faculties either from their own Ordinary or from the Ordinary of the place of embarkation or of any other place at which the ship should happen to touch. (Dec. 13, 1901.)

They might on ship-board not only hear the confessions of all their fellow-travelers but also of all persons who would come to them from land during a brief stop at some port. And should they go on shore, if there was no priest or only one in the place, and they could not easily reach the Ordinary, they might even hear the confessions of all who would ask them to do so and absolve them from sins reserved to the local Ordinary. (Aug. 23, 1905.)

(*b*) The Code has maintained all these concessions and even removed the restriction contained in the last-mentioned decree.

(*i*) Priests going on an ocean voyage may validly and lawfully hear the confessions of all their fellow-travelers without distinction, provided they have faculties from their own Ordinary or from the Ordinary of the place of em-

barcation or of some other port the ship passes.

(ii) When on shore for a short time they need not inquire whether there is more than one priest in the place or try to get in touch with the Ordinary, but they may, as on the ship, receive the confessions of all who come to them, Religious not excepted, and absolve them from cases reserved to the local Ordinary. They enjoy these exceptional powers in ports only for a brief stay, which means not more than three days, according to the Commission of Interpretation. (May 20, 1923; A. A. S. March 1924, p. 114.)

(iii) These faculties are granted for a sea voyage whatever its duration or its purpose, as long as it deserves the name of sea voyage, *maritimum iter*, which must mean more than a pleasure or fishing excursion of a few hours on a yacht or even an ocean steamer.

178. 4. *Accomplices.* The Code renews on this subject the legislation enacted by Benedict XIV chiefly in the Const. *Sacramentum Pœnitentiæ* (June 1, 1741), completed and explained by subsequent papal declarations and by decrees of the Holy Office or the S. Penitentiary.

A confessor can not absolve validly his accomplice in a sin against the sixth precept except in danger of death, and even then he does not absolve lawfully outside of cases of necessity, when there would be no other priest to administer the sacrament.

(a) This law applies exclusively to sins in themselves contrary to chastity, whatever their nature otherwise, whether sins of word, look, or action, complete or incomplete, committed with a person of the same or of the opposite sex; they

must be external, grave both internally and externally, and certain.

(*b*) Complicity supposes some coöperation in the same action; in this matter it may consist in consent externally manifested either by words, signs, or deeds, or even under certain circumstances by silence alone, failure to resist or refuse. Still, purely passive connivance or negative coöperation, neglecting to prevent sin or subsequent approval, do not in themselves constitute complicity properly so called. (Vermeersch, n. 158.) The two parties must, moreover, share in an external action gravely sinful as such, so that there be a grave sin on both sides objectively and subjectively.

(*c*) Outside of danger of death the confessor has no jurisdiction to absolve his accomplice; certainly he can not absolve him directly from the sin in which he coöperated. Some canonists think that under certain circumstances he could absolve the accomplice directly from other sins and indirectly from that one; as for example, if the penitent omitted that sin in good faith and accused himself of others, or if the confessor failed to recognize him. Should the penitent confess the sin the confessor ought not to give absolution except possibly for very grave and urgent reasons; but if he did and the penitent had the necessary dispositions, the sacrament would be valid and fruitful; yet the obligation would remain for the penitent to submit the sin again to the power of the keys for direct absolution.

(*d*) Absolution of an accomplice in danger of death is valid; it is unlawful on the part of the confessor, as the law specifies, not, therefore, on

the part of the penitent, if there is another priest who can hear the confession, even though he might not have any jurisdiction, unless he be unwilling to do so, or it be impossible to ask it of him without serious danger of scandal or defamation for one of the parties or both; or unless the penitent refuses his services.

A confessor absolving his accomplice in defiance of this law incurs an excommunication reserved to the Pope in a most special manner. (Can. 2367; Penal Legislation, n. 331, 332; Berardi, *De Absolutione Complicis*; Noldin, n. 370; Genicot, n. 352; Ballerini, *Opus Theologicum*, V. 414.)

VIII. RUBRICAL FORM OF ABSOLUTION.

(Can. 885.)

179. 1. In the form of absolution as given in the Roman Ritual (Tit. iii, c. 2) we may distinguish three parts: (*a*) A prayer, "Misereatur tui omnipotens et misericors Deus, et, dimissis peccatis tuis, perducatur te ad vitam æternam. Amen. Indulgentiam, absolutionem et remissionem peccatorum tuorum tribuat tibi omnipotens et misericors Dominus. Amen";

(*b*) The words of absolution: "Dominus Noster Jesus Christus te absolvat, et ego auctoritate Ipsius te absolvo ab omni vinculo excommunicationis (suspensionis) et interdicti, in quantum possum et tu indiges. Deinde ego te absolvo a peccatis tuis, in nomine Patris et Filii et Spiritus Sancti, Amen";

(*c*) Another prayer: "Passio Domini Nostri Jesu Christi, merita Beatæ Mariæ Virginis et omnium Sanctorum, quidquid boni feceris et mali sustinueris, sit tibi in remissionem peccatorum,

augmentum gratiæ et præmium vitæ æternæ. Amen."

2. The Council of Trent teaches that the form of the sacrament of penance consists in those words of the minister: "ego te absolvo a peccatis tuis" (Sess. XIV, De Pœnitentia, c. iii), and it commends as a praiseworthy practice the addition of the prayers consecrated by the tradition of the Church, although they do not belong to the essence of the sacrament, *laudabiliter adjunguntur*.

180. 3. The Roman Ritual (l. c., n. 4) permits, in frequent or short confessions, to omit the prayers, "Misereatur . . . , Indulgentiam," and be satisfied with the words of absolution proper, "Dominus Noster Jesus Christus" . . . as far as *Passio Domini Nostri*"; or in cases of danger of death and urgent necessity, with the words, "Ego te absolvo ab omnibus censuris et peccatis, in nomine Patris et Filii et Spiritus Sancti. Amen."

4. Canonists and theologians generally concluded from this that the first and third parts of the rubrical form, including also according to some the words, "Dominus Noster Jesus Christus absolvat te," in the second, were only of counsel, at least probably. (Noldin, n. 237; Lehmkuhl, n. 268; Genicot, n. 265.)

The Code expresses more than a mere wish when it asks that the prayers added by the Church to the form of absolution, although not necessary for the validity of the sacrament, be not omitted without a just cause.

The just cause we may find, as indicated by the Ritual, in the frequency of the confessions or their brevity; or also in want of time when crowds of penitents surround the confessional.

In cases of urgent necessity it remains permissible to use the short form given in the Ritual.

IX. GRANTING OF ABSOLUTION. (Can. 886.)

181. 1. When the confessor finds his penitent wanting in the necessary qualifications or dispositions for the valid or fruitful reception of the sacrament he should, if he can, prepare or dispose him by means of instructions or exhortations, and if this proves impossible or ineffective, refuse absolution.

2. If the dispositions of the penitent remain doubtful, absolution ought to be deferred, unless circumstances would render this course dangerous, unadvisable, or seriously injurious, in which case absolution may or even should be given conditionally.

3. When the dispositions of the penitent are morally certain and the confessor can not doubt his worthiness, if he asks for absolution it should not be refused nor deferred, but granted without delay.

(a) As early as the sixteenth century Pope Pius IV had condemned heretics who maintained the necessity of satisfaction before absolution. (*Licet ea*, 1579.) Alexander VIII pronounced a similar sentence against Jansenists who had revived those errors, and Clement XI (*Unigenitus*, Sept. 8, 1713) reproved again the doctrines of those who, imbued with the same spirit, advocated long delays of absolution to teach penitents humility, make them realize their state, and offer them an opportunity to atone for their sins before reconciliation.

(b) Under the influence of Jansenistic doc-

trines not a few confessors, even in modern times, adopted the rule of demanding of every penitent who had stayed away for some time from the sacred tribunal that he present himself at least twice before receiving absolution; they would not absolve him the first time how satisfactory soever his dispositions might appear. This, too, the Roman Congregations disapproved of as over rigorous.

(c) Without falling into such exaggerations, many theologians have taught that whilst as judge the confessor would pronounce the culprit worthy of forgiveness, as his spiritual physician or director he may defer his absolution if he deems it better for his soul.

This may assuredly be legitimate whenever there remains some, although not very serious, doubt concerning the dispositions of the penitent or even in the absence of any doubt when he willingly accepts the delay; but to impose it on one sufficiently well disposed does not seem fully in keeping with oft-repeated directions of the Holy See, for example, in the Instruction of the Congregation of the Propaganda to the Visitor Apostolic of Western Tonkin (Oct. 3, 1736; Coll. I, n. 320), nor with prescriptions of the present canon, which commands explicitly, without distinctions or restrictions, not to refuse absolution to a penitent certainly well disposed and if he asks for it, nor to defer it. His confession with the proper dispositions entitles him to this benefit. Delay might help, but often it will injure him also, and in any case nothing obliges him to suffer a present loss or inconvenience for the sake of a future even greater gain which is not necessary

for his salvation. (Blat, l. c., p. 243; cf. T. Ter. Haar, C. SS. R., De Conferenda Absolutione Sacramentali Juxta Canonem 886, N. C., Roma, 1919.)

X. SACRAMENTAL PENANCE. (Can. 887.)

182. The teaching of the Fathers, the constant practice of the Church, and the express declaration of the Council of Trent (Sess. XIV, c. 8) clearly demonstrate the necessity of satisfaction as an integral part of the sacrament of penance; hence a twofold obligation.

1. *Obligation of the Confessor.* (a) As minister of the sacrament responsible for its proper administration, as judge in the sacred tribunal representing the rights of the divine justice, and as physician of souls with mission to cure their spiritual maladies, the confessor is bound to impose a penance on all whom he absolves, unless they be in the impossibility of performing it.

(b) The penance, as the Council of Trent and the Code demand, must regularly and as far as possible be proportioned to the number, malice, and gravity of the sins confessed, not mathematically but morally, grave for grave sins, heavier for multiplied and particularly heinous offences than for a single one of a less grievous character.

It must be salutary and appropriate, apt to satisfy the divine justice and to cure the spiritual diseases of the sinner; adapted to his special needs and physical or moral strength, not too long, nor too complicated, nor too difficult for him in view of his condition.

In practice, on account of the ignorance or im-

perfect dispositions of many penitents, the confessor will often find it impossible to give any other penances than a few simple prayers, although the state of the soul as revealed by the confession would call for more specific treatment.

Frequently also prudence will advise greater leniency than the nature of the confession would warrant, because of danger of putting out a smouldering fire by heaping too much fuel upon it.

The priest, writes St. Antoninus, should give such a penance as he thinks the penitent will perform. If a man guilty of grave sin claims inability to do severe penance the confessor should give him such a one as he can persuade him to undertake. If he does not attain perfect success, he may rejoice at least that he has rescued a soul from hell if not from purgatory. On no account should he send a man who shows sorrow for sin away from the confessional without absolution lest he fall into despair or discouragement. It is better to give him a *Pater Noster* or some other light penance if he declares that a heavier one is beyond him.

183. 2. *Obligation of the Penitent.* (a) Since satisfaction *in voto* if not *in re* belongs to the essential proximate matter of the sacrament or is a necessary disposition for its reception, absence of all willingness on the part of the penitent to accept or perform any penance would unfit him for absolution. If he found the particular penance given him too difficult he might ask for a different one or go to another confessor.

(b) Ordinarily he should accept the penance enjoined willingly and perform it without unrea-

sonable delay or within the time prescribed and in the manner prescribed.

He should perform the penance himself personally. Some theologians think that with the permission of the confessor he might do so by proxy at least in the case of almsgiving, but the Code affirms the necessity of personal fulfilment of the obligation, without intimating any possibility of exception to the rule.

XI. THE CONFESSOR'S OFFICE. (Can. 888.)

184. Theologians describe the confessor as judge, father, and physician of souls, or as teacher, physician, and judge, or again as father, teacher, physician and judge. The Code, following St. Thomas, reduces his functions to those of judge and spiritual physician.

1. As judge the confessor is minister of justice and defender of God's honor. He must pronounce on the guilt of those who come to his tribunal, grant or refuse them forgiveness, impose upon them a penance to satisfy the claims of divine justice, exact reparation for the past and guarantees for the future.

As spiritual physician his mission is one of mercy and its object the salvation of souls, their deliverance from ignorance and sin.

He must, then, instruct them, when necessary and possible, give them timely and salutary warnings, dispose them for the reception of the sacrament, and point out the means of perseverance.

185. 2. To discharge these functions worthily the confessor, as judge, should possess a thorough knowledge of the law of God and of the Church

as well as great prudence to apply it to the particular, often intricate, cases of real life.

As physician, he ought to be acquainted with the many and complex maladies of the human soul and the various remedies that may cure them, and have the skill necessary to diagnose the diseases correctly and treat them effectively.

The penitent should regularly supply all the information needed to form an accurate estimate of his guilt and of his spiritual condition; but frequently he will fail to do so. Then the confessor must have recourse to interrogations. This obligation exists for him whenever he has good reasons to believe that the penitent has omitted something necessary for the integrity of the confession or for the fruitful reception of the sacrament.

The interrogation ought to be sufficiently complete, yet discreet not to give offence, moderate and prudent not to render confession odious and too burthensome by over-minute investigation. The confessor does not have to use greater diligence in this examination than the penitent himself nor to arrive at more complete integrity than would reasonably be expected from him if left to his own resources.

Particularly when he touches on matters pertaining to chastity must the confessor proceed with caution and prudence, so as not to cause any unfavorable comment or give occasion to suspicions and possibly to temptation and sin. Most specially should he be on his guard if he has to deal with the young, lest he scandalize them and teach them evil which they know not.

Never should he directly or indirectly ask the

penitent for the names of accomplices in the sins confessed nor for such information as would lead to that knowledge. Under the former legislation those who taught the lawfulness of such a practice incurred an excommunication reserved to the Holy See. The present law has not maintained the penalty, but the practice remains none the less severely condemned.

The confessor may, however, ask all that completeness of confession requires, even though the accomplice would thereby become known.

At times he may or even should oblige the penitent, for the sake of the common good, to denounce the accomplice to the proper superior, but he may not demand that the revelation be made to himself; nor should he volunteer or even regularly agree to make the denunciation for the penitent, with his explicit permission or after receiving the communication outside of the confessional.

XII. THE SEAL OF CONFESSION. (Can. 889.)

By natural, divine, and ecclesiastical law the confessor is bound to observe the strictest secrecy about everything known to him through confession.

186. I. *Development of the Ecclesiastical Legislation.* (a) During the first centuries, as long as public penance for both public and private offences and public confession of public and sometimes secret sins remained the usual practice, the Fathers and ecclesiastical legislators naturally show little concern about the seal of confession.

In the fourth century Aphraates recommends to spiritual physicians not to divulge the diseases

made known to them before the application of the remedy in public penance. A little later St. Paulinus praises St. Ambrose for speaking to God alone of the sins confided to him. (*Vita Sti. Ambrosii*, 39.) St. Augustine says that he followed the same rule of natural discretion, but none of these writers refers to an ecclesiastical law on the subject. St. Leo (457) condemned confessors who used to publish the list of sins made known to them in private. This amounted practically to imposing secrecy. The letter of the Pope passed into numerous canonical collections as representing the discipline commonly received and, no doubt, universally observed; but for explicit and formal legal texts we have to come down to the ninth century, at least in the West. From this time on they abound.

187. (*b*) The Fourth Lateran Council, in the celebrated decree *Omnis utriusque sexus* (1215, Can. 21), prescribing annual confession, solemnly warns confessors not to betray the sinner in any way, by word or sign or by any other means. Should they stand in need of wiser counsel let them ask for it without in any way disclosing the person, under pain of deposition from the sacerdotal office and condemnation to perpetual penance in a monastery.

This left no room for doubt concerning the existence and gravity of the confessor's obligation, but there remained for a time some uncertainty about its exact object and extent. Did the law apply to all confessions, even to those made without sorrow or purpose of amendment, or only to the truly sacramental ones followed by absolu-

tion? Must the confessor observe secrecy about sins not yet committed and, therefore, not really confessed, but which the penitent manifests the intention of committing? Might he not reveal and thus prevent them? May he not do so for the good of the penitent or for the good of Church or State, at least in particularly grave cases, in those, for instance, of a criminal plotting against the life of his sovereign or of a heretic determined to continue disseminating his poisonous doctrines?

Differences of opinion existed among ancient canonists on these and similar questions, but the stricter view, which prevailed eventually, had some defenders almost from the beginning. Richard of Middletown (1282) positively maintained the obligation of keeping the secret of confession whether the penitent had shown sorrow or not, whether he had avowed sins already committed or intended for the future, whether sins against faith or morals. Gerson would not permit an exception to the rule, even to save an empire or to preserve the whole Church from heretical infection; even if the penitent declared his intention of killing the king or the Pope, said Cajetan, in spite of the teaching of not a few doctors to the contrary. (*Dictionnaire de Théologie Catholique*, Confession, col. 859, 890, 891, 920-924, 960; *Canoniste Contemporain*, Juillet, Novembre, 1912, p. 426, 649; *Revue du Clergé Français*, 1er Février, 1905, p. 449.)

188. 2. *Present Discipline.* The Code affirms in the very terms of the Lateran Council the sacredness of the seal of confession and the strict obliga-

tion for the confessor to keep it inviolate. We must, then, understand the law in the sense commonly accepted in modern times.

(a) The obligation imposed by it is one of justice and religion, based on the natural law, implied in the divine institution of confession, and confirmed by ecclesiastical authority, admitting of no exception because required for the good of the sacrament and of souls, than which no higher interests can exist.

(b) It extends to all sins, grave or light, public or occult, confessed to a priest with a view to absolution; to the circumstances of the sins and to the defects of the penitent made known for the completeness of the accusation; to the refusal or concession of absolution; to the penance imposed; and in general to anything made known through, or in connection with, sacramental confession, the revelation of which would render confession odious or onerous.

(c) It binds primarily the ministers of the sacrament but also, as the Code explicitly declares, all others who have come lawfully or unlawfully to know some of the secrets protected by the seal, as, for example, interpreters, superiors who had to give special faculties, theologians asked for advice, persons who accidentally or deliberately overheard or read the confession of another, etc.

189. (d) It forbids the indirect as well as the direct violation of the secret of confession. Explicit disclosure of sin with clear designation of the sinner, whether the hearers know him or not, whether or not they realize that the information imparted to them has come through sacramental

confession, constitutes a direct violation. There is indirect breaking of the seal if without any intention of revealing the identity of the penitent something is said or done which will or may lead to the knowledge or suspicion of his sin; as, for example, if after receiving a person's accusation the confessor warned his employers to watch him or changed his external ways of dealing with him; or if after hearing a few penitents he mentioned one of the cases just proposed to him.

Direct violation of the seal by a confessor would entail excommunication *latæ sententiæ* reserved to the Holy See in a most special manner. Indirect violation renders one liable to suspension from the celebration of Mass and the administration of the sacrament of penance, privation of benefices, exclusion from promotions, and even degradation in graver cases. (Can. 2369; Penal Legislation, n. 338.)

(e) The penitent may authorize his confessor to speak to himself or to others of matters of confession, but that permission should be given freely and explicitly, asked for rarely and used very discreetly and cautiously.

XIII. USE OF KNOWLEDGE OBTAINED THROUGH CONFESSION. (Can. 890.)

190. Any use of confessional knowledge that might result in revelation of the sacramental secret must remain unlawful under all circumstances. But is all use of it forbidden, even when it would not endanger the secret?

I. *Ancient Theories and Legislation.* (a) Some ancient canonists or theologians thought that such knowledge might be used by superiors

for the government and benefit of their subjects. According to them, a superior might dismiss a novice exteriorly irreproachable but whose unfitness he had learned from confession, and he might remove from office one whose unworthiness he had discovered in the same manner as long as he did not publish the motive of his action.

Jesuit theologians generally did not favor this doctrine; Vasquez calls it common but false. In 1590 the General of the Society, Father Aquaviva, enjoined on all his subjects that they abstain from teaching it whether in private or in public and principally from following it in practice. Shortly after, Pope Clement VIII (*Sanctissimus Dominus*, May 26, 1593, § 4) forbade all superiors actually in office and confessors who might come into office later to use for external government the knowledge of the sins of others gained through confession.

Some, however, refused to see in this decree an authentic declaration of the divine law having universal force and interpreted it as applying exclusively to Religious Superiors and to external government, not to other superiors or to such matters as elections; hence they persisted in maintaining that a Bishop, for example, might refuse promotion and an elector his vote to a penitent known as unworthy by his sacramental confession.

191. (b) On Nov. 18, 1682, the Holy Office condemned these theories and indirectly affirmed the unlawfulness of the use of sacramental knowledge with injury to the penitent, *cum gravamine penitentis*, even if a greater good would seem to result from this and the secret remained intact.

This decree practically settled the controversy

and fixed the discipline on this point; subsequent ones only confirmed and more fully explained it, marking more and more clearly the distinction between the internal and external forum.

(c) Thus it became and has remained a universally accepted principle among canonists that besides preserving strictly the secret of confession a priest must not make any use of it that would cause injury or reasonable displeasure, *gravamen*, to the penitent. What use would come under this last provision can not be defined with mathematical precision and may depend on various circumstances, the faithful showing themselves more exacting and more sensitive regarding this matter in some countries than in others.

192. The Holy Office, on June 9, 1915, sent to Bishops and Superiors of Religious Orders an Instruction on this subject, pointing out abuses that existed in some places and prescribing remedies.

Some ministers of the sacrament of penance, it says, while carefully preserving the seal, do not hesitate to speak of what they have heard in confession either in private conversations or even in sermons, for the purpose, they claim, of edification. They may not thereby commit an injustice against any particular person, but in matters of this importance we have to shun even the appearance of evil and whatever might give rise to suspicion. If a preacher illustrates some point of doctrine by examples drawn from the confessional, although he knows that no one can discover to whom he has reference, some of his hearers may think that they or others can. Perhaps they have confessed similar

sins and imagine that the preacher now publicly discusses their case; or they feel guilty of the same offence and fear lest others suspect them of being the ones whom the speaker has in mind. They at least surmise that their secret faults will also serve some day as theme for moral exhortation. All this is distasteful to penitents and calculated to inspire diffidence and to keep men away from the confessional. The faithful should feel that in the Sacred Tribunal they deal with God Himself through His minister and that as man the confessor knows nothing of what he has learned as Christ's representative.

The Holy Office, therefore, enjoins on all local Ordinaries and Superiors of Religious Orders or Congregations, as a grave obligation of conscience, to repress promptly and effectively any abuse that might exist among their subjects in regard to this matter. For the future they shall see that in schools of theology, in ecclesiastical conferences, in public and private addresses, their clergy be explicitly taught that they ought never to mention matters of confession under any form or pretext whatsoever, not even merely in passing, directly or indirectly, in private conversations or in sermons, particularly in missions or retreats. In the examinations of confessors previous to the concession of faculties special attention shall be given to these points. It remains permissible, cautiously and prudently, to seek advice when needed.

Disregard for these directions on the part of confessors should, after due warning, be punished severely and more serious cases reported to the Holy Office. (*Il Monitore Ecclesiastico*, Giugno 1917, p. 199; *Periodica de Re Canonica* et

Morali, Nov. 1920, p. 112; Blat, l. c., p. 250; Canoniste Contemporain, Mai 1917, p. 277; Nouvelle Revue Théologique, 1921, p. 148, 164, 531; 1922, p. 261.)

193. 2. *Present Law.* It does not introduce any changes in the existing discipline and merely renews the decrees of 1593 and 1682.

1°. Superiors may not in any way make use of the knowledge of sins obtained through the confessional for the external government of their subjects. The law applies clearly to all, not simply to Religious Superiors; the present text leaves no room for restrictive interpretations.

The prohibition regards the knowledge of sins or of matters covered by the seal of confession, not such knowledge as that of human nature, the ways of God in souls which may be acquired by the exercise of this ministry.

2°. In general, confessors are strictly forbidden to make such use of confessional knowledge as would injure or offend the penitent, cause him some *gravamen*.

(a) As interpreter of the natural and divine positive law, the Church prohibits all use of any information gained through the confessional which, if known to the faithful, would tend to keep them away from the Sacred Tribunal and which they would not approve or willingly accept but rather object to, if not all, at least the majority or a notable portion of them.

The Instruction of the Holy Office on this matter (June 9, 1915), never promulgated in the *Acta Apostolicæ Sedis*, and issued by a Congregation with directive rather than legislative authority, under the form of Instruction not of Decree,

did not have general legal force, and if it had it might have lost it by the promulgation of the Code. But as a directive norm for the application of the law it retains all its value and must enjoy the highest authority by reason of the source from which it emanates. The positive prescriptions it contains remain obligatory for those to whom they were specially addressed or in places in which the abuses it aimed at correcting may still exist. They bind others and in other places in the measure in which the Code confirms them, at least implicitly.

(b) From what the law forbids we conclude that it allows the use of confession in what does not endanger the seal, nor cause any scandal or injury or legitimate displeasure to the penitent, which can not prove distasteful to him, render confession odious or more onerous, or keep true penitents away from the sacrament. Thus a priest may profit by what he has learned in confession to pray for his penitents, prepare himself better for his functions, give more practical advice or instruction. In the example often given of a priest learning in confession before Mass that the wine prepared for the sacrifice contains poison, it seems difficult to conceive circumstances in which he might not either abstain from saying Mass or change the wine without making illegitimate use of the knowledge gained through confession.

XIV. NOVICE MASTERS OR SEMINARY SUPERIORS AND THE CONFESSIONS OF THEIR SUBJECTS

(Can. 891.)

194. 1. In order to help in maintaining the dis-

inction between the internal and the external forum, Clement VIII (May 26, 1593, § 4) had decreed that Religious Superiors should not hear their subjects in confession except when the latter went spontaneously to them or had reserved sins to be absolved from.

Thus the rule admitted of exceptions, and moreover the same Pontiff declared in a Constitution of March 19, 1603, that it did not apply to novice masters. These might and even regularly should act as ordinary confessors to novices.

In seminaries the Council of Trent supposed that confessors would come from outside; but, in many places, with the implicit and often also the explicit approval of the Holy See, the practice prevailed of having the confessions of students heard by the teachers residing in the house, the superior not excluded. This system might and did offer some inconveniences chiefly in institutions with strongly-centralized authority, and on July 5, 1899, the Holy Office decided that in the city of Rome no Superior of a Religious Community or of a seminary or college should, outside of cases of real necessity, hear the confessions of pupils dwelling in the same house.

Outside of Rome this measure had only directive not legislative force and, as was explicitly declared shortly after, it did not affect the privileges of regulars. For them the legislation of Clement VIII still held.

195. 2. With the publication of the Code this discipline underwent important changes. Henceforth the novice master and his companion, the Superior of a seminary or college, may not hear the confessions of their subjects who live with

them in the same house unless the subjects spontaneously ask for it, in particular cases and for some grave and urgent cause.

(a) Nothing in the law indicates a withdrawal or limitation of jurisdiction which would render the confessions invalid as well as unlawful.

(b) The rule concerns novice masters, not other Religious Superiors as such, for whom the Code has maintained substantially the provisions of Clement VIII. (Can. 518.) It applies also to every superior of a seminary or college in regard to pupils living in the same house with him, that is, in regard to boarders, not to day students, nor probably in regard to boarders who would not be at the time living in the house, for example, during the vacation.

(c) Exceptions are admitted, but on three conditions: that the novice or student of his own choice and with perfect freedom asks the superior or novice master to hear his confession; that he does so for grave and urgent reasons, as if he needed special advice for the peace of his conscience; if in the absence of any other confessor he felt anxious to receive absolution; that this is done only for particular cases, not habitually.

XV. OBLIGATION OF HEARING CONFESSIONS.

(Can. 892.)

196. 1. Pastors or quasi-pastors, and generally all priests having the cure of souls even though not holding an office canonically so called, like Vicars Parochial, Vicars General or Capitular, are under a grave obligation of justice resulting from a quasi-contract of hearing the confessions

of their people whenever these reasonably ask for it.

(a) Moralists explain how they would have to fulfill that obligation even at the risk of their life in cases of extreme or quasi-extreme necessity, and with serious inconvenience to themselves in cases of grave necessity.

(b) They should preferably discharge this duty themselves if not legitimately prevented from doing so, particularly when penitents ask for them; still they comply with the strict requirements of the law as long as they hear the confessions of their people either personally or through others, since the Code leaves them the alternative and *in alternativis debitoris est electio et sufficit alterum adimpleri*. (20^a Regula juris in 6 °.)

(c) Parishioners have the right to be given an opportunity of receiving the sacrament of penance, not only from time to time at long intervals, but as often as they reasonably desire, which may mean frequently.

2. In cases of necessity all priests having the usual faculties are obliged to hear confessions. This obligation is one of charity binding under pain of venial or grievous sin, with very grave, grave, or light inconvenience to the confessor, according to the degree of necessity or urgency.

3. In cases of danger of death all priests, even those who have ordinarily no faculties, are bound in charity to hear the confessions of the faithful. The gravity of this obligation depends also on the need of the penitent for the sacrament.

CHAPTER II

THE RESERVATION OF SIN

(Can. 893-900.)

(Benedict XIV, De synodo Diocesana, Lib. V, c. 4, 5; Thomassin, P. I. L. ii, c. 13, 14; Chardon, o. c., De la Pénitence, sect. 2^e; Martène, o. c., L. I, c. vi, Art. 6; Van Espen, Pars 2^a, Tit. vi, c. 7; Chouet, La Pénitencerie Apostolique, c. 1, 2; N. Farrugia, De Casuum Conscientiæ Reservatione, Marietti, 1922; Ecclesiastical Review, June 1922, p. 558; Canoniste Contemporain, Sept. 1916, p. 403; Mars 1920, p. 115.)

I. ORIGIN

197. 1. In the beginning the Bishops alone imposed the public penance on sinners, reconciled and absolved them. When penitents grew more numerous, and principally as private gradually replaced public penance, they associated with themselves some priests called *penitentiarii* to assist them, but they remained for a long time still the ordinary and chief ministers of penance, reserving to themselves all the graver cases.

In the organization of parishes the priests put in charge of them, especially in country places, needed power to reconcile sinners and they received it, but they, too, had to refer the more serious offences to the Bishop and frequently they did so of their own accord, preferring to leave the more difficult cases to him. (Thomassin, l. c., c. 14.)

The Bishops in turn, when confronted with particularly grave crimes or dangerous and obstinate sinners, not infrequently sent them to the Pope, that he might pronounce on their

guilt and impose upon them a condign penance.

The Popes themselves, independently of Bishops' request or consent, reserved to their tribunal judgment on certain crimes or criminals. Thus, St. Gregory the Great in 592 threatened the Archbishop of Larissa with excommunication from which the Pope alone could absolve him if he violated certain ordinances. This was by particular decree. We have an example, probably the first, of papal reservation by general law in the celebrated canon *si quis suadente diabolo* enacted by Innocent II in the Council of Clermont (1130, which punished personal attacks on the clergy with excommunication reserved to the Holy See. From this time on we meet frequently with similar enactments, but at first they concern exclusively matters of the external forum and affect directly penalties such as excommunications rather than sins. For a direct reservation of sin in itself we have apparently to come down to Pope Sixtus V, who reserved to himself the sin of simony committed in promotion to Orders (Const. *Sanctum et salutare*, Jan. 5, 1589), a measure, however, withdrawn by his successor Clement VIII (Const. *Romanum Pontificem*, Feb. 8, 1596) because of practical difficulties found in its application. Benedict XIV afterwards reserved to the Holy See the false accusation brought against a priest of solicitation in confession (*Sacramentum Pœnitentiæ*, June 1, 1741), which was under the former discipline and remains at present the only sin really reserved to the Holy See in itself independently of any censure.

198. 2. Reservation of sin has its juridical

foundation in the judicial character of absolution, which, as explained before, requires for its validity power not only of Order but also of jurisdiction. The former, received in ordination, is indivisible and inamissible, but the latter, communicated by legitimate superiors, admits of restrictions.

In answer to Wyclif, Luther, and others, who had attacked reservations as contrary to the institution of Christ and of no effect before God, the Council of Trent pronounced anathema against those who say that Bishops have no right to reserve sins to themselves except in the external forum and that reservation does not prevent a priest from giving real absolution. (Sess. XIV, De Pœnitentia, Can. 11.)

As to censures, since the remission of a penalty belongs to the superior who inflicted it, censures must naturally remain reserved to their author until he grants to others permission to absolve from them. Reservation then, does not in their case particularly imply withdrawal or restriction of power already possessed, but simply absence of concession.

199. 3. From these principles it follows that all superiors who can communicate to others power to absolve from sin or inflict censures can also reserve cases to themselves, which only means that they can put some restrictions on the delegation.

Generally those who possess ordinary jurisdiction can delegate it, and delegated jurisdiction itself can, under certain conditions, be subdelegated; but by the present law only local Ordinaries and for exempt Religious the Superiors of

the Order can delegate jurisdiction for confessions, not, for example, pastors or *pœnitentarii*, although they have ordinary jurisdiction. (Can. 874, 875.) Here the Code lays down the rule that those can reserve cases to themselves who have ordinary power to grant jurisdiction for confessions and inflict censures; the Vicar Capitular is excepted and also the Vicar General unless he receives a special mandate.

II. NATURE OF RESERVATION

200. 1. When the superiors who transmit jurisdiction evoke certain cases to their tribunal, that is, retain the exclusive right of pronouncing judgment upon them, they thereby restrict the power of inferior judges. This avocation of certain cases and consequent limitation of jurisdiction in its transmission constitute reservations.

They affect directly the confessor or inferior judge, and the penitent or culprit only by way of consequence; their immediate and primary object is to bring more serious or difficult cases before a higher court and more competent judges. To our Fathers, says the Council of Trent, it has seemed of great importance for the discipline of the Christian people that some more atrocious crimes should not be absolved by all priests, but only by those of higher rank. (l. c., c. vii.) In an Instruction of July 13, 1916, on the reservations of cases of conscience, the Holy Office describes them as extraordinary remedies used for the correction of disorders particularly dangerous to souls, or the extirpation of deeply-rooted evils, or the restoration of Christian discipline.

Reservation may have also, although only

mediately and objectively speaking secondarily, a corrective and punitive effect on the individual sinner, and this has led a few canonists and theologians to class them among penalties. Their theory, opposed to the commonly accepted view according to St. Alphonsus (vi, 591), almost buried, says d'Annibale (I, n. 343, note 35), when revived by Ballerini, seems hard to reconcile with the teachings of the Council of Trent and finds no real support, in spite of claims to the contrary, in the Instruction of 1916, still less in the present law. Nowhere does the Code mention reservations of sin among either vindictive or medicinal penalties, nor does it have any reference to them in its penal section.

The use made of them in modern times may in some instances have given them the appearance of punishments, but they clearly did not have that character in the beginning, when the Bishop alone administered penance, nor as late as the twelfth century, when Bishop Gerard of Amiens, for example, reserved to himself the confessions of pastors, nobles, and barons. They have not changed essentially since; as defined by the Code, they formally consist in a limitation of powers and evocation of certain cases to a higher court for more competent treatment; they may act also as preventive or curative remedies. The necessity of going for absolution to a confessor in authority or endowed with special faculties may prove mortifying and serve as deterrent from sin; but the precept of confession itself has similar effects, and we do not call it a penal law, nor would we give this name to an ordinance which for the protection of the community and the good

of individuals would forbid any but the more skilful physicians to treat certain particularly serious or infectious diseases. We do not consider as penal the law on the confessions of Religious.

Reservations of sin do not affect the culprit directly; they produce their effect not in the place of commission of the sin but of confession; they do not hold outside of the territory (Can. 900), whilst penalties once incurred do, even medicinal penalties. (2248, § 1.) Although therefore, they may contain a penal element, they are not penalties in the technical sense of the term, but they stand by themselves as disciplinary measures of a distinct nature with a purpose entirely their own.

201. 2. From the supposed penal character of reservations and from other considerations some have concluded that ignorance excuses from them. In the light of present legislation and of recent decisions this opinion, never very commonly held, appears devoid of all intrinsic probability. (Vermeersch, l. c., n. 174; Ferreres, *Epitome Theologiæ Moralis*, edit. 4^a, n. 807.) Not a few of its old supporters have abandoned it (Noldin, 1920, III, p. 416), although it retains still some of them. (Arregui, *Summarium Theologiæ Moralis*, 1919, p. 476; Sebastiani, *Summarium Theologiæ Moralis*, 1919, n. 476; Farrugia, o. c., p. 30.)

Since reservations do not affect the sinner except indirectly, and depend on the law not of the place in which he has sinned but in which he confesses, we should not expect knowledge or want of knowledge on his part to have any effect upon

them. In fact, the Code, which, when treating of penalties, explicitly states that ignorance may excuse from them and even provides that "if a confessor, not knowing of the reservation, would absolve from censure and sin, the absolution from censure would be valid, provided it be not one *ab homine* or one reserved to the Holy See in a most special manner" (Can. 2247, § 3), never suggests that ignorance of the reservation by the penitent will in any way facilitate absolution from the sin. Some had found this implied in one of the clauses of the decree of 1916; Can. 899 omits it. In the enumeration of causes which may excuse or free from reservation of sin we do not find ignorance. (Can. 899, 900.)

The Commission of Interpretation declared, Nov. 24, 1920 (A. A. S., p. 574), that strangers are bound by the reservations of the place in which they confess; still, ordinarily they do not know them, and the sins are supposed committed in places in which the reservations do not exist.

III. DIFFERENT KINDS OF RESERVATIONS

202. 1. The Code distinguishes between papal and episcopal reservations. It speaks here of reserved sins and mentions reserved censures, referring for the latter to the fifth book on ecclesiastical penalties.

One sin it gives as reserved to the Holy See in itself, *ratione sui*, which supposes the existence of indirect reservations, *ratione alterius*. And in the fifth book we find that when a reserved censure, which prevents the reception of sacraments, *viz.* excommunication or personal interdict, is attached to a sin, that sin itself becomes reserved

like the censure and because of the censure, in such a manner that whatever cause excuses or frees from the censure excuses likewise and frees from the reservation. (2246, § 3.)

We find also in the fifth book a papal excommunication attached to the sin already reserved in itself to the Holy See. (Can. 894, 2363.)

Thus we have in the present law cases reserved to the Holy See and others reserved to the Ordinary; reserved sins and reserved censures clearly distinguished; sins reserved in themselves, others reserved solely by reason of the censure attached to them; and, by common law, one reserved to the Holy See both in itself and by reason of a censure.

Several subdistinctions introduced by canonists have little foundation in the text of the Code and tend to cause confusion.

203. 2. The opinion has been expressed that reservation of sin by reason of censure effects only the lawfulness, not the validity, of absolution. Nothing, however, either in the text of the law or in the context, indicates any intention of using the term here (Can. 2226, § 3) in any other sense than the one defined by the Code (Can. 893, § 1), of limitation of jurisdiction, which pertains to the validity of the sacrament.

According to the common interpretation of canonists, by excommunication or personal interdict the reception of sacraments becomes unlawful only, not invalid. This applies to the sacrament of penance, but with some qualifications. An excommunicated or personally interdicted person may not lawfully receive absolution from any sins as long as he remains under censure; nor can he

be absolved validly for want of the proper dispositions as violating a law of the Church. If, however, he acts in good faith and possesses otherwise the required dispositions, he can be absolved validly and on his own part lawfully even by a confessor conscious of his want of necessary faculties, but directly from his other sins and only indirectly from the sin reserved by reason of the censure, because the jurisdiction of the confessor, limited by the reservation, does not extend to that matter. (Sole, *De Delictis et Pœnis*, n. 174, 217; Wernz, VI, 189; Cappello, *De Censuris*, n. 36.)

204. 3. This chapter deals exclusively with reserved sins, which mean sins reserved in themselves, whether to the Holy See or to the Ordinary, not with reserved censures except to mention them, nor consequently with sins reserved by reason of a censure, since their reservation does not really differ from that of the censure. Sins reserved in themselves and by reason of a censure come under the rules for reserved sins and those for reserved censures.

The essential juridical difference existing between sin and censure called for distinct treatment of the question of their absolution and reservation.

Absolution from sin belongs to the internal forum and supposes priestly powers; absolution from censure belongs to the external forum, although the Church for the good of souls permits that it be granted also in the internal forum; it requires only jurisdiction.

Power for absolving from sin is received in

ordination, although for its valid exercise the priest must have subjects and jurisdiction, which he obtains from the Ordinary of the place in which he hears confessions, with the limitations set by that Ordinary and no other. Power for absolving from censures or penalties in general comes from the superior who inflicted them. (Can. 2236.) When he inflicts them by way of general law they do not hold outside of his territory, after the manner of laws which are territorial. When inflicted by way of particular precept, they follow the subject and remain reserved to their author everywhere. (Can. 2247, § 2.)

In keeping, therefore, with the tendency in modern canonical legislation to separate more and more completely matters pertaining to the internal from those of the external forum, the Code gives here the rules regarding reserved sins, and in the fifth book those regarding reserved censures. (Can. 2248–2254.) Each set is complete and neither has a single reference to the other; even violations of their prescriptions are visited with distinct penalties and dealt with in two distinct canons. (2338, 2366.) Although similar in several respects, they differ in many others. Greater facility is granted for the absolution of reserved sins as pertaining to the internal forum than for that of reserved censures, which suppose full knowledge and contumacy. (Can. 899, 900, 2254.) Recourse is not prescribed after absolution from reserved sin in cases of necessity, but only after absolution from reserved censures (Can. 2252, 2254); reservation of sin to a local

superior never holds outside of his territory (Can. 900, 3°), reservation of censure sometimes does. (Can. 2247, § 2.)

On the other hand, the law nowhere provides, as it does in regard to reserved censures (Can. 2247, § 3), that ignorance of the reservation on the part of the confessor will permit him to absolve validly from reserved sin without special faculties; the reason for this provision probably does not exist in this case, as the sin would ordinarily be remitted indirectly whilst the censure would not, and the penitent would remain deprived of spiritual advantages. Moreover, the only sin reserved by the Code may be considered as reserved practically in a very special manner. (Periodica, Aug. 1, 1923, p. 68.)

IV. SIN RESERVED TO THE HOLY SEE. (Can. 894.)

205. 1. The Popes, principally since the twelfth century, have often reserved censures or other penalties to themselves, but very rarely sins or matters pertaining strictly to the internal forum.

The present law has about thirty-four censures reserved to the Holy See, but only one sin, *viz.* the charge of solicitation falsely brought against a confessor. Some canonists speak of it as a simple, others as a special, others again as a most special, reservation. In reality, the Code does not distinguish degrees in reservations of sin, and there was little occasion for it, since by common law there is only one such reservation. For practical purposes it has the effect of a most special reservation, as absolution from it requires, from the nature of the case, special, specific faculties.

2. To come under this law the accusation must:

1°. be false and known as such by the accuser, so as to imply malice and grave fault on his part.

2°. It must be brought against a confessor and in connection with his functions as minister of the sacrament of penance; that is, it must be an accusation of the crime of solicitation as defined by Benedict XIV.

3°. The charges must be presented with the formalities of a judicial act to the ecclesiastical judges designated by law to receive them, that is, to the Holy Office or to the Ordinary of the place, even if the accused party is a Religious (H. O. July 20, 1890; A. S. S., xxx, p. 249), or to persons delegated by them; even the Vicar General would need a special mandate. In other matters the Vicar Forane or the parish priest can receive judicial denunciations (Can. 1936), but here the Code refers us to the Papal Constitutions dealing with this case (Can. 904); the formalities prescribed by them remain, therefore, obligatory. (H. O., 20 Mar. 1901; Penal Legislation, n. 324.)

3. Under the present law this sin is also punished with excommunication reserved to the Holy See in a special manner. This implies that the offender will have to suffer all the consequences of such a censure, but the reservation of the sin remains of the same nature as before and has the same effects.

V. SINS RESERVED TO ORDINARIES. (Can. 895-899.)

206. I. *Author and Mode of Reservation.* (Can. 895, 896.) Sins can be reserved by local Ordinaries, which practically means residential Bishops, as the law excludes Vicars Capitular and

Vicars General, unless they have a special mandate, and by some superiors in exempt clerical Orders.

1°. Local Ordinaries can reserve sins only after discussing the matter in Synod or outside of Synod, after taking the advice, not necessarily obtaining the consent, of the cathedral chapter or of the diocesan consultors and of several of the more prudent and approved parish priests of the diocese. The Holy Office in the decree of 1916 gives the reason of this rule now sanctioned by the Code: Reservation is an extraordinary remedy liable to prove more harmful than profitable unless used with moderation and caution. It ought to be employed only for the cure of evils of unusual gravity. To ascertain the existence in the diocese of conditions calling for such exceptional measures the Ordinary should consult his regular advisers and also some of the priests who come in closer contact with souls and can give a more prudent counsel.

These formalities are required for the validity of the act; the decree of 1916 said: "generally speaking," implying the existence of some exceptions; but the Code has not retained that clause.

207. 2°. Only in exempt clerical Orders can superiors reserve the sins of their subjects, and among them the Superior General alone has that power or in autonomous monasteries the Abbot, not other superiors, even though they may delegate jurisdiction for confessions. (Can. 875.)

For the validity of the act these Ordinaries need also the advice of their normal counsellors, although not their consent unless the constitutions would require it.

The effect of their reservation remains now very much limited. Can. 518 provides for the appointment in every Religious clerical house of several confessors endowed with power to absolve from the sins reserved in the Order. Can. 519 enacts that even though the constitutions prescribe or advise confession at stated times to specially appointed confessors, if a Religious, whether exempt or not, for the peace of his conscience, goes to a confessor approved by the Ordinary of the place, but not approved specially for Religious, the confession thus made is both valid and licit, all privileges to the contrary notwithstanding, and said confessor can absolve that Religious also from sins and censures reserved in his Order. These reservations, therefore, affect only confessors who have received their faculties from the Religious Superior and are not among the ones appointed to absolve from reserved sins in the Religious house.

208. 2. *Number and Character of the Sins Reserved.* (Can. 897, 898.) 1°. Number. (a) A Council of Limoges in 1031 still reserves to the Bishop all public sins. Subsequent Synods usually speak only of the graver sins or give a list of them, sometimes quite a long one. (Saintes, 1280, Can. 14; Nimes, 1284.) Gerson in the fifteenth century complains of the multiplication of reserved cases; he objects particularly to the reservation of secret sins. His protests did not have much effect, but a little later Cardinal Campegio, Legate of the Pope in Germany, had a decree enacted at Ratisbon in 1523 granting every confessor power to absolve lay persons from all occult faults with only a few exceptions. The

Council of Trent recommended to Ordinaries moderation in the use of reservations, and although it limited them only in a general way to the graver and more atrocious crimes, Benedict XIV could say that in his day it was not the custom to reserve occult sins. Roman Congregations insisted on all occasions on greater freedom for penitents. In 1661 the Congregation of the Council refused its approbation to a long list of reserved cases presented by a Bishop, and allowed him to retain only ten or twelve.

In Religious Orders, reservations, numerous in the beginning, had also gradually become fewer. Petrus Cantor speaks of monasteries in which the Abbot alone administered penance, and Gerson, of Carthusian rules which reserved all grave sins to the superior of the convent. Clement VIII, by the Constitution *Sanctissimus* of May 26, 1593, restricted the reserving power of Religious Superiors to twelve specified cases. (Benedict XIV, *De Synodo Diœcesana*, L. v, c, 5; Thomassin, l. c., c. 14, n. 7.)

(b) Even that number seemed too large in modern times, and the Holy Office in the decree of 1916 reduced it to three or four at most for all Ordinaries.

Practically, at present penitents who have reserved sins to confess do not go to the Bishop or his penitentiary, but to their ordinary confessor, upon whom devolves the necessity of procuring the faculties to absolve them. Thus reservations, failing to attain one of their chief purposes, have lost their utility in many cases, and if multiplied would easily give rise to serious inconveniences.

Yet if not as beneficial as formerly to the in-

dividual sinner, whom they no longer compel to seek the services of more skilful physicians, they may still help to impress upon the faithful the gravity of certain sins and call the confessors' attention to diseases requiring more careful treatment. Thus they may serve, as pointed out by the Holy Office, for the removal of specially serious obstacles to the good of souls, the cure of social evils, the extirpation of public vices, and the restoration of Christian discipline. They remain, therefore, but as extraordinary remedies intended for exceptional cases; hence the rule maintained by the Code, which forbids Ordinaries to reserve more than three or at most four sins.

209. 2°. Character. Neither may Ordinaries, and for the same reasons, reserve any sins indiscriminately. (a) They should reserve only external sins, particularly grave and scandalous, *graviora et atrociora*, specifically determined and still prevalent.

Merely internal sins do not constitute a danger to the common good calling for this exceptional measure, and their reservation might readily become a source of unnecessary anxiety to souls.

In appreciating the gravity of the sin here it is not exclusively, not even principally, the object which should be considered, but rather the special, local circumstances which render it particularly dangerous to the community and call for that measure in that place.

To avoid misconceptions, the law should determine as exactly as possible the nature of the sin reserved, not in a merely generic but in a specific manner, in its lowest species. It would not suffice to declare sins against temperance or

against chastity reserved; but it should be stated which of the many sins opposed to these virtues come under the law.

The Holy Office, in the Instruction of 1916, added that Ordinaries should not reserve sins of frailty unless they have some other special malice attached. In 1677 the Congregation of Bishops and Regulars (July 3) refused approval to an ordinance of the Bishop of Mirepois reserving sins against clerical celibacy.

When the conditions which called for the reservation cease, the reservation itself does not cease *ipso facto*, but the superior should withdraw it.

210. (b) Ordinaries must abstain absolutely from reserving those sins which are already reserved to the Holy See either in themselves or by reason of a censure; regularly, although the prohibition here admits of exceptions, they should not reserve those to which the common law attaches even an unreserved censure.

They may attach a censure to the sins which they reserve to themselves, as the Code has done for the sin reserved in itself to the Holy See, and then if the censure is one preventing the reception of sacraments these sins become reserved both in themselves and by reason of the censure. This, however, would require a special enactment and is not contained in the reservation of the sin either by common or particular law. We should not presume the existence of a censure without positive evidence, the more so as the Holy Office warns Ordinaries against the addition of such sanctions to the reservation of sins, and the Council of Trent, as now the Code, admonishes them to use censures very sparingly.

From all this it will appear that in the present penitential discipline reservations are extraordinary, secondary measures, to be used only under exceptional circumstances, and for which other more efficacious and less dangerous ones may be substituted. The normal condition for a diocese or an Order would then be to have very few special ones if any at all. In the diocese of Rome there has not been for some time (1920), any sin reserved by the Ordinary and all confessors have faculties to absolve from those reserved to him by the common law. (Vermeersch, l. c., n. 181; Blat, p. 267.) The Holy Office (Inst. July 13, 1916, n. 8) suggests to Bishops as a better and more efficacious remedy than reservations the formation throughout the diocese of pious and prudent confessors trained to treat grave spiritual diseases as they would treat them themselves.

VI. PROMULGATION AND ABSOLUTION OF SINS
RESERVED TO ORDINARIES. (Can. 899)

211. 1. Once local Ordinaries have decided for reasons of necessity or utility to reserve certain sins, they must take care that their decision becomes known not only to the confessors but also to the faithful; else the reservation can not attain one of its purposes, which is to point out the special seriousness of certain disorders and turn people away from them. They may choose for this whatever means they deem most suitable. Having the reservations posted in some prominent place in every church of the diocese has proved practical and effective in some places but would not be found expedient in many others.

212. 2. Reservations would have little meaning

or utility if faculties to absolve from them were granted too freely or indiscriminately, without regard to the qualifications of confessors or the needs of the people. At the same time the legislator wishes to provide for sufficiently liberal communication of these faculties, not to render absolution from reserved sins too difficult.

(a) The canon penitentiary has power by reason of his office to absolve from all sins reserved to the local Ordinary. He can not, however, delegate it.

(b) The law prescribes communication of the same power to several priests and at least to the Vicars Forane, with permission for the latter, principally yet not exclusively in districts more distant from the episcopal city, to subdelegate them, not habitually, however, but each time they are needed, to any of the confessors of the district who apply for them in individual and urgent cases.

(c) By explicit provision of the law and independently of any delegation, power to absolve from all sins which the Ordinary has reserved to himself in whatever form, whether in or out of Synod, belongs to all pastors during the whole paschal time and to missionaries during the mission.

This would not apply to sins reserved to the Ordinary by another superior, for example, the Provincial Council; nor does it apply to censures reserved to him in whatever manner, since, as said before, the Code does not deal here with censures and when it gives elsewhere rules for their absolution it has no reference to this canon. (Can. 2248-2254.)

Under the name of pastors come also quasi-pastors who rule quasi-parishes in Vicariates or Prefectures Apostolic, and also vicars parochial who have full charge of the parish, such as *vicarii æconomi, substituti*, and sometimes *adjutores* but not *coöperatores*. (Can. 451; A. A. S., 1924, p. 113; *Monitore*, Marzo 1924, p. 76; A. A. S., Martii 1924, p. 113.)

The paschal time here includes the whole period set aside for fulfilment of the Easter duty, either by common law or by concession of the Bishop or probably by special extension in individual cases. Pastors during that time enjoy these exceptional powers not for the annual confession alone, or the one made in view of the paschal Communion, but for all confessions. The privilege goes with the time.

Probably also we may consider as missionaries and entitled to these faculties the preachers of spiritual retreats to a group of persons. (Vermeersch, n. 80.)

VII. CESSATION OF RESERVATIONS. (Can. 900.)

213. For the reasons stated before, the following provisions can not concern reserved censures, for which notably different and independent ones are found elsewhere, but they must apply to all sins whether reserved to local Ordinaries, Religious Superiors, or the Pope. The Instruction of 1916, which has supplied the substance of this canon, was addressed to local Ordinaries and laid down these rules for episcopal reservations, but the Code, treating here of reservations of sin in general, extends the legislation to them all. Hence it has omitted, no doubt purposely, the re-

striction in the previous text and formulated the principle in most comprehensive and absolute terms, any reservation ceases, *quælibet reservatio*, instead of any reservation of Ordinaries, *quælibet episcoporum reservatio*, thus leaving no room for exception, not even in favor of the one sin reserved to the Holy See, for which, in fact, there existed little reason, as these cases occur rarely and they would often remain reserved by reason of the censure now attached to them. (Commission of Interpretation, Nov. 10, 1925 ad VI; A. A. S., Dec. 1925, p. 583.)

214. All reservations of sin, then, lose their force:

1. Whenever sick persons unable to leave the house make their confession. Any kind or degree of sickness and probably also any condition due, for example, to accident rather than to disease proper, suffices as long as it keeps the patient at home.

The fact of living in a house with a resident chaplain would not prevent one from benefiting by this concession, as it does not require any special difficulty in obtaining a confessor.

2. Whenever penitents, whether formally engaged or not, confess with a view to marriage; they must intend to contract this marriage, or perhaps rectify an invalid one, in the near future and approach the tribunal of penance as a proximate preparation for it.

3. After presentation to the proper superior of the request for faculties necessary in a particular case and refusal of the same by him the reservation ceases *ipso jure*. The law does not distinguish between formal or informal, reasonable or unreasonable, refusal. It would apply,

no doubt, should the local Ordinary refuse, although empowered to grant them, faculties for absolution of the sin reserved to the Holy See; nor would anything prevent the application of this ordinance of the supreme authority in the Church after refusal by the Holy Penitentiary itself, should it ever occur.

In all such cases the reservation would have the effect of obliging the penitent to go twice to confession and might prompt one who has reserved sins to select a confessor likely endowed with the required powers. It serves, besides, to call attention to the special gravity of the offence.

The Code here does not, as did formerly the Council of Trent, direct confessors to refer penitents with reserved sins to higher authority, but rather supposes, according to the now long received practice, that they secure themselves the faculties they need to terminate the case.

4. Reservation ceases likewise when in the prudent estimation of the confessor recourse to the Superior for necessary power would result in serious inconvenience to the penitent or danger to the seal of confession.

The legislator demands here not merely a reasonable cause for excusing from the law, nor a very grave, but a really grave one. In similar matters authors consider as serious inconvenience the impossibility of abstaining from Holy Communion or Mass, or of going again to confession without causing scandal or giving rise to suspicions; the necessity of putting off compliance with the precept of annual confession or Communion, of returning to the confessor from some distant place or at great cost, of remaining in the

state of sin for a long period of time, which for some persons may mean two or three days only; also according to some the loss suffered by the penitent, who would perhaps not return, even through his own fault (Vermeersch, n. 179); but not a brief delay of absolution or the mere fact of having to come a second time, or the simple privation of attendance at a sodality Communion.

215. 5. Lastly, reservations of sin imposed by a local superior do not hold outside of his territory, even if the penitent would leave it solely for the purpose of obtaining absolution; he would only be going from one place, where confessors having their jurisdiction limited can not absolve him, to another, where that limitation does not exist, and they can. For the same reason strangers, as the Commission of Interpretation declared (Aug. 17, 1919), are affected by the reservations of the place in which they confess. Confessors can not absolve, whatever may be the penitent's habitual residence, from sins to which their jurisdiction does not extend.

In Religious Orders reservations do not hold outside of the Order and any confessor approved by the local Ordinary can absolve from them. (Can. 519.)

All this follows from the nature of reservation as limitation of jurisdiction by the superior from whom it comes, affecting the confessor directly and through him the penitent. (Can. 983, § 1.)

Reservations of censures can hold outside of the superior's territory, as power to absolve from penalties belongs to the one who imposed them. (Can. 2236, § 1.) When he imposes them by way of law he does not intend to reserve them

outside of the territory, since laws are territorial of their nature, but when he imposes them by way of precept he can and does retain exclusive authority to release from them wherever the culprit may go. (Can. 2247, § 2.) Power to absolve from sin supposes priestly Orders and jurisdiction over the penitent, which jurisdiction can be given by the Ordinary of the place of confession or in a Religious Order the penitent's superior.

In the cases above enumerated the confessor absolves from reserved sins directly and without obligation of recourse afterwards.

CHAPTER III

THE RECIPIENT OF THE SACRAMENT OF PENANCE

(Can. 901-907.)

I. NECESSARY, SUFFICIENT, AND FREE MATTER.

(Can. 901-903.)

216. 1. Every person guilty of grave sins committed after baptism and not yet remitted through exercise of the power of the keys, that is, not yet remitted by valid absolution after proper avowal, must confess them all, indicating their number and exact nature as well as he remembers after a diligent examination, and explaining in confession the circumstances which may alter the species of the sin.

Sins committed before baptism do not come

under the law of confession. In cases of doubtful baptism the obligation of confession would seem doubtful also, and consequently not strictly binding. Many theologians, however, maintain the strict obligation and they give in support of it, besides various intrinsic arguments, several declarations of Roman Congregations, particularly an answer of the Holy Office demanding confession of a convert from Lutheranism rebaptized conditionally (July 17, 1715), an Instruction of the same Holy Office addressed to the Bishop of Philadelphia (July 20, 1859) and inserted in the Acts of the Second Plenary Council of Baltimore (p. 291), and another Instruction sent to the Bishops of England (Dec. 17, 1868), prescribing confession for converts who receive baptism under condition. They would consider these pronouncements as declarations of the divine law and of universal value and application.

To some, on the other hand, the doctrinal and general character of these decisions does not appear sufficiently clear. They remain particular decrees imposing an obligation on those to whom they were addressed but not, strictly speaking, on others. Thus we would have neither a doctrinal definition affirming the obligation of confession for persons doubtfully baptized, nor a disciplinary law imposing it throughout the whole Church, but only particular ecclesiastical legislation binding in certain definite places like England and the United States in the same manner as any other ecclesiastical law. (A. S. S., IV, 320-324; Collectanea P. F., n. 644, 955; 1689; D'Annibale, III, n. 252; Lehmkuhl, II, n. 424; Tanquerey, De Pœnitentia, n. 352; Vermeersch, n. 184;

Mgr. D. Mannaioli, *De Obligationibus Christianorum Propriis Quibus in Genere Dubie Baptizati Obstringuntur*. M. Romæ, Pustet, 1913; N. R. T., Dec. 1919, p. 581.)

217. 2. The divine law does not oblige us to confess mortal sins already remitted directly by the power of the keys, nor venial sins, but we may do so; it benefits us and those sins suffice as matter for the sacrament.

3. Nor does the law of confession oblige a person who can not manifest his sins otherwise than through an interpreter. It permits, however, the use of this extraordinary means, provided care be taken to remove all danger of abuse or of scandal. As said before, in such cases the interpreter would have to keep strictly the secret of confession.

II. OBLIGATION OF PENITENTS TO DENOUNCE SOLICITATION. (Can. 904.)

218. 1. The term solicitation serves here to designate the attempt made by a confessor, taking advantage of his office, to lead somebody into a sin against the sixth commandment.

The Council of Treves (1227, Can. 8) pronounced excommunication against solicitation in confession. Gregory XV (Const. *Universi*, Aug. 30, 1622) extended the measure to the whole Church and added a strict command for the solicited party to denounce the guilty confessor. Benedict XIV confirmed, explained more clearly, and completed this legislation, particularly in the Bull *Sacramentum Pœnitentiæ* of June 1, 1741.

The Code renews on this point the prescriptions contained in former papal Constitutions, in-

terpreted by subsequent decisions of Congregations, and explained by canonists or theologians. (Berardi, *De Sollicitatione*.)

219. 2. Besides the severe penalties it threatens the guilty confessor with, the Code imposes on the solicited party the obligation of denouncing that confessor to the Holy Office or to the Ordinary within a month, under pain of excommunication and of refusal of absolution, and on the confessor of such penitent the grave duty of acquainting him with this law.

1°. In order that the obligation of denunciation may exist the crime of solicitation must be real and certain beyond any possibility of serious doubt, whether as regards the facts themselves or their character.

(a) This supposes an attempt by a priest, secular or regular, to lead some one into sins of lust, external and grave, whether of word or action.

(b) It must have taken place in some connection with the ministry of confession: during the confession itself, immediately before or immediately after, on the occasion or under the pretence of confession, in the confessional outside of the occasion of confession, or in any other place generally used for hearing confessions, or in one chosen for the confession, whether in reality a sacramental confession is made or not.

(c) The solicitation may be by words, signs, or actions; by writing, to be read at the time or later. The words or actions may be indifferent in themselves, as long as they manifest, under the given circumstances, the intention of inducing the other party to offend gravely against purity.

(d) It does not matter whether the solicitation was all on one side or mutual, immediate or mediate, consented to or rejected; whether it was understood then or later on, as long as it was understood some time; whether the solicited person was *puber* or *impuer*, male or female; whether the sin was to be committed with the confessor himself or with a third party.

220. 2. Any person who knows of a crime of solicitation is bound by the natural law to denounce it to the proper superior that he may correct the abuse and prevent the harm that would result for souls. But ecclesiastical law imposes a special obligation on the solicited party.

(a) That law binds any person without exception who has been solicited, even if the solicitation was consented to or mutual. The lapse of time does not excuse from it, nor the impossibility of bringing juridical evidence.

(b) The denunciation must be made within a month from the moment the obligation becomes known; it is made to the Holy Office or to the Ordinary of the place in which the solicited party actually lives, even when the culprit is a Religious. The superior receives it personally or through a delegate specially deputed for the purpose, in presence only of another ecclesiastic acting as notary. The deposition should specify the time, place, and other circumstances of the solicitation and give the exact names of the person involved, all this under oath and duly signed.

(c) The one solicited is supposed to appear personally before the superior, but should he find this impossible or only inconvenient he may let the superior know that he has a denunciation to

make, without mentioning now any names but signing his communication. The superior will then ordinarily delegate an ecclesiastic to receive his denunciation and interrogate him according to a certain form transmitted to him, and the results of the investigation will be sent to the proper authority. (A. S. S., XXV, p. 451.)

(d) If the party can neither appear personally before the superior nor write to him he may ask his confessor to do so for him. The latter may accept that mission and write without mentioning any names, but he is not obliged to act as intermediary in such matters and often it might not be expedient to do so. The penitent then can only wait for an opportunity to discharge his obligation.

(e) Only a grave inconvenience or the reasonable fear of serious loss, spiritual or temporal, to self or to family would excuse from making, or permit postponing, the denunciation. Neglect of this duty for over a month without legitimate excuse or dispensation from the proper authority would entail excommunication to last till fulfilment of the obligation. (Penal Legislation, n. 336.)

221. 3. The confessor of the one solicited must under pain of grave sin tell him of his duty and urge compliance with it; he could not give absolution to one who would illegitimately refuse obedience. Caution and prudence, however, must be used not to disturb good faith without any hope of success, particularly when dealing with the sick or dying, or when scandal might result from the admonition. At times prudence may suggest a delay in the warning, but as the confessor may not

see the penitent again or not in the near future he should direct him to mention the matter to the other confessor. He might for a serious reason proceed in the same manner if he felt incompetent to solve the problem.

At times the penitent, without any special reason, experiences very great repugnance to fulfilling the duty of denunciation. The confessor might then, especially if little can be expected from compliance with it, propose the case of the S. Penitentiary without mention of names, and perhaps obtain a dispensation. (Vermeersch, n. 195.)

III. FREEDOM IN THE CHOICE OF A CONFESSOR. (Can. 905.)

(Thomassin, P. I. 1. 2, c. 10-14; Martène, l. c. I, c. 6, a. 6; Villien, A. History of the Commandments of the Church, p. 176; Canoniste Contemporain, Août 1920.)

222. 1. *Ancient Discipline.* As long as penance retained its public character, the judge of the penitential forum and minister of the sacrament was primarily the Bishop in the diocese and afterwards the pastor in the parish. With the spread of secret confession the administration of penance became more a matter of the strictly internal forum, not so closely connected with the external government of the diocese or parish. Still Bishops, as said before, for a long time reserved to themselves the absolution of numerous offences or of certain classes of persons and pastors enjoyed the exclusive right of administering penance in their parish.

(a) According to the rule of St. Chrodegang, the faithful should go to confession three times a

year to their proper priest or pastor and the monks every Saturday to their Bishop or Prior. (C. 32; Migne, P. L., vol. 89, col. 1072.) Synods forbid Bishops or pastors to admit strangers to reconciliation without the permission of their own proper priest. (Treves, 1227, 1310, Can. 89; Pont Audemer, 1279, Can. 5.) If any one wishes to confess his sins to another priest or to a Religious he may do so after obtaining his pastor's permission and he must always go to the latter at least once a year. Ayton of Basle urges the faithful before they start on a pilgrimage to confess their sins in their parish church because, he says, their Bishop or pastor alone has the right to absolve them.

(b) The pastors themselves and ecclesiastics generally had their special confessors. An English Synod of 1217 orders the appointment in every chapter of two confessors to whom all ecclesiastics will go unless they prefer to go to the penitentiary or the Bishop. A Council of Oxford (1222, Can. 18) supposes that rural deans go to confession to the Bishop; but lest some might find some difficulty in this, it demands also the appointment of two confessors for them in each district under the authority of an archdeacon. In cathedral chapters all canons must confess their sins to the Bishop or the dean or their delegates. The same Council prescribes the appointment of special confessors for Nuns. (Can. 46.) The Bishops of Coventry (1237) and of Worcester (1240) assign confessors to all clerics in each district. (Villien, p. 180.)

(c) In some Religious Orders the rule pre-

scribed confession to the Abbot or Prior. Benedict XI (*Extra Vag. Inter cunctas*, 1304; V, 7, De Privilegiis, 1) supposes the existence of such rules and their binding force. Clement VIII practically abrogated them wherever they still obtained, by forbidding Religious Superiors to hear the confessions of their subjects unless these came to them of their own accord or had reserved cases. (Const. *Sanctissimus*, May 25, 1593.) He commanded at the same time that in each monastery two or three or more prudent confessors be appointed to receive the confessions of the members of the community. In the same Constitution he ruled that novices would confess their sins to the novice master. (*Prælectiones Juris Regularis*, Auctore F. Piatto Montensi, I, q. 432 ff.)

223. 2. *Modern Times*. (a) The exclusive right of pastors to hear the confessions of their people met with little or no opposition till the advent of the Mendicant Orders in the thirteenth century. Then a reaction set in, which the privileges granted by Popes to the Friars indirectly at least encouraged and strengthened. This gave rise to controversies and prolonged struggles between seculars and regulars; Pontiffs had to intervene on several occasions to repress excesses committed on both sides, but they maintained permission for the Mendicants, under certain conditions, to receive the confessions of the faithful without authorization from the pastors. Later on they extended it to the Jesuits, and then gradually to all priests both secular and regular, so that the faithful might make even

their Easter confession to any approved confessor. (Villien, p. 180; Benedict XIV, *Institutiones*, xviii; St. Alphonsus, vi, 4.)

One further obstacle to freedom remained for some time, *viz.* the difference of rite. Clement VIII in the Const. *Sanctissimus* allowed Greek priests to absolve Latin Christians, but only in cases of necessity. A few years later (June 5, 1626) the Holy See instructed Latin Bishops to leave their subjects free to confess their sins to any Catholic Ruthenian priest, and the Congregation of Propaganda, on Dec. 11, 1838, declared that Oriental Bishops may not forbid the confession of their subjects to Latin missionaries and that such prohibition would not impair the validity of the act. In an Instruction addressed to the Apostolic Delegate to Egypt (Ap. 30, 1862) the same Congregation asserted still more explicitly the right of Eastern Christians to receive the sacrament of penance in Latin churches and in general the right of all the faithful to go to confession, even for the fulfilment of their paschal duty, to any approved confessor, with permission for the latter to absolve any Catholic who comes to his tribunal.

(*b*) The appointment of special confessors for ecclesiastics had gradually fallen into disuse, but in clerical Religious Orders it remained the rule that novices made their confession to the novice master and professed members to confessors delegated by the superiors, not to secular confessors except in certain cases of necessity. (Pius Montensis, l. c., q. 436. 447.) A decree of Aug. 5, 1913 and May 3, 1914 had introduced

on this point the discipline now sanctioned by the Code.

224. 3. *Present Law.* (a) The Code explicitly affirms again the freedom of all the faithful to confess their sins to any legitimately approved confessor they choose, even to one of a different rite.

(b) In Religious Orders of men novice masters no longer receive habitually the confessions of novices (Can. 891) and although the constitutions may prescribe or advise confession at stated times to appointed confessors, professed members may, for the peace of their conscience, go to any confessor approved by the Ordinary of the place, and the confession made to him will be both valid and lawful, all privileges to the contrary notwithstanding. (Can. 519.)

For the valid absolution of female Religious the Code still requires special faculties (Can. 876), but it facilitates for them access to acceptable confessors endowed with necessary power. (Can. 520, 521.) Moreover, it provides that if any Nun or Sister for the peace of her conscience goes to a confessor approved by the local Ordinary for the confessions of women, the confession thus made in a church or oratory, public or even semi-public, which includes the community chapel, is both valid and licit. (Can. 522.)

IV. PRECEPT OF CONFESSION. (Can. 906, 907.)

The divine law obliges all Christians guilty of grave sin to receive the sacrament of penance when in danger of death and more probably also

several times in life. The ecclesiastical law imposes that obligation once a year.

225. 1. *Origin of the Legislation.* In the first centuries Christians guilty of some grave offence had to present themselves before the Bishop or his delegate at the beginning of Lent, generally on Ash Wednesday, to receive the public penance; for the formal absolution and ceremony of reconciliation they had to wait till Holy Thursday.

In the fifth century many good Christians commenced, although not guilty of any grave external offence, to join the ranks of penitents at the beginning of Lent, confessing their sins and receiving a penance. Writers of the eighth century speak of this as a common practice in their time. By the middle of the next century, when secret had generally replaced public confession, the custom remained of confessing one's sins at the beginning of Lent, and it had by this time obtained the force of law in many countries at least. In some, particular law demanded three confessions a year, probably as a preparation for the three obligatory Communions, but the infractions were numerous. "To-day," says Alain of Lille, "things have come to the point that lay people and clerics hardly confess once a year." To prevent further decline the Fourth Lateran Council (1215) decided to impose a minimum of obligation, but impose it everywhere and strictly enforce it.

226. In its twenty-first canon, *Omnis utriusque sexus*, it enacted that: all the faithful who have arrived at the age of discretion must make private confession of their sins to their own priest at least once a year, under pain of exclusion from

church during life and denial of Christian burial after death.

(a) Some canonists took the age of discretion as synonymous with the age of reason, but others understood it in the sense of age of puberty, when the penalties attached to the law can be incurred; hence several particular Synods fix twelve or fourteen as the age of first obligatory confession. (Narbonne, 1227, Can. 7; Lucca, 1308, Can. 57; Tarragona, 1329, Can. 67.) The first interpretation at last prevailed, in spite of the authority of such men as Peter of Ancharano and St. Antoninus of Florence.

(b) The Council did not fix any special time for fulfilment of the obligation; but as confession in the common estimation served chiefly as a preparation for Communion, many diocesan statutes and particular Synods join together the precept of Easter Communion and that of annual confession.

(c) According to the then prevailing discipline, the Council supposes that this confession will be made to the pastor, and particular legislation often reminds the faithful of this duty. Even when the friars had received from Popes independent authority for the administration of penance, pastors and Bishops often still insisted that for their annual or Easter confession the faithful should go to their own priests. Some went so far as to give this as a necessary condition for the fulfilment of the precept and to affirm that the Pope himself could not dispense from this obligation. (John of Pouilly condemned by Pope John XXII.) At times Bishops, when giving jurisdiction to regular confessors, made an

exception for the fortnight of Easter, but the Congregation of Bishops and Regulars declared these restrictions null and void. Still, as late as Sept. 17, 1792, the Congregation of Propaganda felt the need of pronouncing it unlawful to impose on parishioners the obligation of confessing to their pastor during the paschal time.

(d) Particular Synods renewed the penalties enacted by the Council and some added even new ones, such as pecuniary fines, but these soon became obsolete, as also in many places, exclusion from church during life. Denial of Christian burial was maintained more strictly, yet not without some attenuation as the number of the guilty increased. The Ritual, in accordance with a declaration of the Congregation of Bishops and Regulars, applied the sanction only to those of whom it was publicly known that they had not complied with the duty of annual confession and Communion and that they had died without any sign of contrition. (June 14, 1596.) (Villien, p. 151-186.)

227. 2. *Present Legislation.* The Code reproduces the text of the Lateran law with a few slight changes, which confirm the interpretation that had prevailed.

(a) It employs the term "use of reason" to explain the meaning of "age of discretion" and remove all possibility of doubt about its interpretation and clearly impose the obligation of confession as soon as one attains sufficient mental development to be capable of sinning. The Commission of Interpretation declared, as the text itself should have sufficed to show, that this law

became binding even before the age of seven if one reached the use of reason before. The same principle applies as for the precept of Communion.

(b) The present law does not mention the pastor as necessary minister of the sacrament nor does it attach any special sanction to this provision; offenders may become public sinners and thus liable to the punishment of denial of Christian burial, which alone had survived of the ancient punishments.

(c) The year, according to the usual way of speaking, would mean the civil year, from the first of January to the thirty-first of December, but some prefer to reckon it from Easter to Easter or from the moment of commission of mortal sin. No legal text strictly speaking excludes any one of these interpretations. In practice the faithful fulfill at the same time the precept of annual confession and that of Easter Communion.

(d) By declaring venial sins free matter for confession, without intimation of any exception, the legislator clearly implies that the precept of annual confession binds only persons conscious of mortal sin. (Vermeersch, n. 182; Blat, p. 280.)

(e) As Pope Alexander VII had indirectly declared (Sept. 24, 1665), it is here explicitly stated, that a sacrilegious or wilfully invalid confession does not suffice to fulfill the precept of confessing one's sins.

CHAPTER IV

THE PLACE FOR HEARING CONFESSIONS

(Can. 908-910.)

228. 1. *The Church.* The proper place for hearing confessions is the church or an oratory, public or semi-public. Christian tradition has habitually reserved the administration of sacraments, like other religious functions, for the places of public worship. Even for extreme unction ancient Rituals and Pontificals show the sick brought to church when their condition at all permitted.

In their primitive form the ceremony of the imposition of penance on Ash Wednesday and that of solemn reconciliation on Holy Thursday regularly took place in church. There is no evidence of the practice of administering the sacrament of penance outside of churches or chapels, except in cases of necessity, before the eleventh or twelfth century. Papal concessions extended beyond the intended limits may account for the change introduced at that time. Benedict XIV refers to regulars who heard confessions in private houses on the ground of a permission received from Clement X to hear them anywhere, but this Pontiff himself, the Pope says, had declared that he did not mean the permission in that sense. (*Magno cum animi*, June 2, 1751, § 20.)

At the beginning of the eighteenth century it did not seem quite clear yet that confraternities might have confessionals and priests hear confessions in their oratories. Interrogated on that

subject, the Congregation of Rites answered that they might, but with the permission of the Bishop. (March 8, 1711.)

The present law allows confessions in semi-public chapels and, moreover, it gives churches and oratories as the normal, not absolutely the only lawful, place, at least for the confession of men, even outside of cases of necessity.

229. 2. *The Confessional.* 1°. Origin. Ancient monuments show no traces and writings contain no mention of that piece of church furniture now commonly known as confessional.

John Peckam, Archbishop of Canturbury, in an instruction to Nuns (1279), admonishes them to make their confession in an open place, in front of the altar and in full view of those who pass by. (Labbé et Cossart, II, p. 1068.) In a painting of the end of the thirteenth or beginning of the fourteenth century by Giotto, representing the sacraments, can be seen a priest seated on a chair receiving the confession of a female penitent kneeling before him and vested in a long cloak which covers her head. A Synod of Verdun in the sixteenth century gives this rule: let penitents make their confession kneeling, hands joined in prayer, the men bare-headed, the women covered with a veil. Till then the veil seems to serve the purpose of the present grate.

According to some historians, St. Charles Borromeo would have introduced the use of the modern confessional, which he describes in its minutest details. He certainly contributed to its propagation. After him several particular Synods render it obligatory in various places.

Soon the Roman Congregations required it for

confessions or at least something equivalent to it. The Propaganda, in an Instruction to the Archbishop of Sofia, asks him to forbid his missionaries under severe penalties to hear the confessions particularly of women without a confessional, or if they can not have this, without a small table, immovable and provided with a grate, between the confessor and the penitent. (Feb. 22, 1660; Coll., n. 138.) A decree of Aug. 26, 1780 (Coll., n. 546) renews the same prescriptions. In a letter to an Irish Bishop (Feb. 12, 1821; Coll., n. 754) the Congregation demands that when by special concession priests hear the confessions of women in private houses they should not do so without a grate or something similar, except in the case of sick penitents confined to their bed. Only in one instance does the Congregation, no doubt for very special reasons, positively allow missionaries to hear in private houses the confession of women merely covered with a veil as in ancient times. (March 17, 1785; Coll. 572.)

230. 2°. Present Law. (*a*) In churches the confessions of men should ordinarily be heard in a confessional. (Comm. Int., Nov. 24, 1920.)

The confessions of women should never be heard but in a confessional, except in cases of necessity and then with proper precautions.

(*b*) Confessionals intended for women's confessions should always be in a place open to all, not, *v. g.* in a closed chapel or sacristy, and so visible that any one can see them without having to look for them, not, therefore, in a dark corner. Regularly they should be in a church or public oratory or in a semi-public one, but destined for

the use of women, not, *v. g.* in the oratories of confraternities of men. Women's confessions may occasionally be heard in those also under proper conditions, but not habitually and, therefore, they should not have confessionals specially intended for that purpose.

Some communities have the confessional in a special room called confession room. The law does not exclude this arrangement, provided the room serves for confessions only and remains open. The Propaganda (Aug. 26, 1780; Coll. n. 545) allowed Religious who had no oratory attached to their residence to hear the confessions of women in some other place open and accessible and provided with a confessional.

(c) In the confessional there must be between the confessor and the penitent a grate, an iron grate, say St. Charles and the Congregation in the decree just quoted (Aug. 26, 1780), so fixed that it can not be moved and perforated with small holes. The Congregation of Bishops and Regulars, in an answer to a Bishop of Pesaro (Sept. 22, 1645), speaks of holes not bigger than the ring finger. St. Charles describes them as of the size of small peas, *instar ciceris minuta parvaque*. The Code does not enter into these details and merely calls for small openings.

Ordinarily confessionals in churches serve for both men and women; should some serve only for men the above rules would not apply strictly to them.

231. 3. Confessions in Private Houses. 1°. Women should not make their confession outside of the confessional, therefore not in private houses except in case of sickness or for other

reasons of real necessity, and then with such precautions as the local Ordinary may deem opportune.

(a) The sickness, which according to an answer of Propaganda to the Ordinary of Constantinople includes also old age, decrepitude, and surdity, must be such as to prevent access to church. (Sept. 21, 1840, ad. 8; Coll., n. 913.) Another case of necessity exists when there is no church or oratory in the place.

(b) As precautions under such conditions the Congregations ask that the confessions be heard in an open, accessible place (Aug. 26, 1780); that the door of the sick-room remain open, so that confessor and penitent may be seen from afar (Feb. 12, 1821); that women at least cover their head with a veil (March 17, 1785); the Ordinary may prescribe others.

2°. The confessions of men may be heard in private houses; the Ritual demanded for this a reasonable cause. The Code does not explicitly lay down any condition, but the church remains none the less, as stated in a previous canon, the normal place for the administration of the sacrament of penance as of the other sacraments.

CHAPTER V.

INDULGENCES

(Beringer, *Les Indulgences*; Lepicier, *Indulgences*; Blat, o. c., p. 287; Vermeersch, o. c., n. 200; Fanfani, *De Indulgentiis*, 1923.)

Many of the questions concerning indulgences belong to dogma, moral theology, or liturgy. The

Code here gives only the principal canonical rules that pertain to the granting or the gaining of these favors.

ARTICLE I. GRANT OF INDULGENCES

(Can. 911-924.)

I. NATURE AND EXCELLENCE OF INDULGENCES. (Can. 911.)

232. 1. *Nature.* An indulgence is the remission before God of the penalty due to sins already forgiven as to the guilt, which the ecclesiastical authority grants out of the treasury of the Church, to the living by way of absolution, to the dead by way of suffrage.

(*a*) Indulgences produce their effect not in the external forum only, before the Church as a society, but also in the internal forum, before God, by the real remission of a debt due to His justice.

(*b*) By indulgences is remitted only the temporal, not the eternal, penalty due to sin, still less the guilt itself of the sin, which it supposes wiped out by absolution or perfect contrition as a necessary prerequisite.

(*c*) The Church, which has received from Christ power to forgive sin, both as to guilt and to penalty, and who has the distribution of the spiritual treasures accumulated by Our Lord and the members of His mystical body, can satisfy the claims of divine justice by taking from the superabundant satisfactions of Christ and His saints and applying them to sinners.

(*d*) To the living over whom she has jurisdiction she can apply them by way of absolution or of juridical sentence, pronouncing and making

them free from punishment, but for the faithful departed, over whom she does not exercise direct authority, she can only offer those satisfactions to God with the prayer, never without some efficacy, that He accept them in their behalf.

(e) Some ancient documents contain the formula *a pœna et culpa*, apparently including in certain indulgences the remission of the guilt as well as of the penalty; but a study of the various forms used by the Roman Curia, Chancery, or Penitentiary has shown that these were so-called *Confessionalia*, *Litteræ Confessionales*, Letters of Confession or Indulgence, not exclusively indulgences in the modern strict sense of the term. (Emile Goller, *The Papal Penitentiary*; *Canoniste Contemporain*, Nov. 1915, p. 583.)

When pastors enjoyed the exclusive privilege of hearing the confessions of their parishioners, some of the faithful, wishing for greater freedom, applied to the Ordinary or even to the Pope. The latter sent them letters authorizing them to go to any priest or to a certain one with powers for this confessor to absolve them from sin, *a culpa*. Sometimes they added faculties to absolve from sins reserved to the Bishop and even from some of those reserved to the Pope when these letters came from the Holy See. Then some contained power to grant, at the point of death, full absolution or remission *absolutio*, or *remissio plena*, or *plenaria*, which clearly included the remission of the penalty as distinct from the guilt of sin. This was soon stated explicitly in concessions of faculties to absolve from all sins and from penalties as well: *omnium peccatorum, de quibus corde contritus et ore confessus extiteris, etiam*

pænarum. In the course of time the Popes came to grant those faculties in favor of the living also and they would express them in the brief formula *potestas absolvendi a pæna et culpa*, or more briefly still, *indulgentia a pæna et culpa*, concession of power to absolve from penalties as well as from sin. These were, then, faculties to absolve penitents and dispense them from the penance or to absolve them and grant them a plenary indulgence.

2. *Excellence*. The legislator urges on all the faithful great esteem and love for indulgences, which free us from the effects of sin by application to our souls of the merits and satisfactions of Christ and His saints.

II. AUTHOR OF INDULGENCES. (Can. 912-913.)

233. 1. The Roman Pontiff, to whom Christ has entrusted the stewardship of the whole spiritual treasury of the Church, possesses by virtue of his office power to grant indulgences. Others have it only by explicit concession of law or by delegation.

2. By express disposition of the present law:

(a) Cardinals may grant indulgences of two hundred days in any place and to any person under their jurisdiction or protection. In other places they may grant them only to those present. (Can. 239 § 1, n. 24.)

(b) Metropolitans may grant indulgences of one hundred days in their dioceses and in the whole province. (Can. 274, 2°.)

(c) Residential Bishops may, after taking possession, grant indulgences of fifty days in the places under their jurisdiction (Can. 349, § 2);

Vicars and Prefects Apostolic have the same power within their territory and as long as they remain in office, even though they may not have the episcopal character (Can. 294, § 2); often they receive more extensive faculties by delegation.

(*d*) The common law allows pastors and any priest assisting the dying to impart to them the apostolic blessing with a plenary indulgence. (Can. 468, § 2.)

3. This power of Prelates is very much restricted as compared to that of the Roman Pontiff:

(*a*) They can not delegate to others authority to grant indulgences except by express permission of the Holy See;

(*b*) Nor grant indulgences applicable to the souls in purgatory;

(*c*) Nor attach indulgences to an object, an act of piety, or an association to which the Holy See or some one else has already attached indulgences, unless they prescribe new conditions.

III. PAPAL BLESSING WITH PLENARY INDULGENCE. (Can. 914, 915.)

234. 1. For several centuries, before the loss of their independence in 1870, the Popes had made it a practice four times a year to impart their solemn blessing with plenary indulgence from the balcony of one of the great basilicas to the crowds gathered around. As some princes and people who lived far away from the Eternal City asked for a share in this privilege they at times delegated Prelates or regulars to impart the blessing in their name.

Clement XIII, in the Const. *Inexhaustum* of

Sept. 3, 1762, withdrew a number of those concessions, but left intact those made to Religious Orders, and he granted to all Bishops faculties to impart the papal blessing with plenary indulgence regularly twice a year on the sole condition of request for them.

235. 2. The Code maintains the concession unconditionally and provides that:

(a) Bishops may impart the papal blessing with plenary indulgence in their respective dioceses twice a year, on Easter Sunday and some other solemn feast left to their choice. They have not for this to celebrate solemn Mass themselves, as long as they assist at it, but they must use the prescribed formula as found in the Roman Pontifical. (Beringer, o. c., II, (50).)

Abbots and Prelates Nullius, Vicars and Prefects Apostolic, even though not raised to the episcopal dignity, may also give this blessing in their own territories, but only once a year on one of the more solemn feasts.

(b) Regulars have not by common law the privilege of imparting the papal blessing, but some possess it by special concession. They may use it only in their own churches or in churches of Nuns or tertiaries duly aggregated to their Order, but not on the day on which the Bishop himself gives the papal blessing in the same place, that is, the same town or city.

Benedict XIV prescribed for them a formula which still remains obligatory. (Beringer, o. c., II (52); Ritual, Tit. viii, c. 32.)

(c) These rules do not concern the blessing which some preachers, principally Religious, have power to give at the end of missions or retreats

and which they impart by making the sign of the cross with a crucifix and pronouncing the words: *Benedictio Dei Omnipotentis*, or the form given in the Ritual. (Cong. Rituum, May 11, 1911.)

Nor does this canon deal with general absolutions and plenary indulgences granted once or several times a year in some Religious Orders or with the blessing and plenary indulgence imparted several times a year to the tertiaries of certain Orders. For these Leo XIII (*Quo universi*, July 7, 1882) prescribed two distinct formulas found also in Rituals and beginning with the words "ne reminiscaris" and "intret oratio" respectively. (Beringer, l. c., II (53).)

IV. PRIVILEGED ALTARS. (Can. 916-918.)

236. 1. Nature. The privilege consists essentially in a plenary indulgence of special efficacy attached to the altar in such a manner that as far as the intention of the grantor and the power of the keys extend a Mass celebrated at that altar and applied to a soul in purgatory can deliver it at once; whether it will have that effect must depend on God's will, as in all cases of indulgences applied by way of suffrage.

Ordinarily altars have that privilege only in favor of the deceased, but some are privileged also for the living, *pro vivis et defunctis*. Applied to them the favor frees them, if they are in the proper dispositions, from all penalty due to sin, and it possesses special efficacy to do so because of the value of the Holy Sacrifice.

2. Origin. We have examples of privileged altars at least as early as the year 1537, but at first they remained rare. Benedict XIII (July

20, 1724) granted the favor of one to all patriarchal, metropolitan, and episcopal churches; Clement XIII extended it to all parish churches. (May 19, 1759.) The concession had, however, to be renewed every seven years, a formality not required now.

237. 3. *Present Law.* By a general disposition of law, the Holy See grants the favor of one privileged altar to every cathedral, abbatial, conventual, parochial and quasi-parochial church; not to oratories public or semi-public unless they be united to parish churches or serve as their subsidiaries.

It belongs to the Bishops, Abbots, Prelates Nullius, Vicars and Prefects Apostolic and Major Superiors in clerical exempt Orders to designate the altar which in their respective churches shall enjoy the privilege and to declare it privileged permanently, as long as the church lasts, without need of renewal. By virtue of this concession every church can have only one privileged altar. To receive the privilege an altar must be fixed or stable and not portable, with a stone consecrated although not irremovable itself. The privilege goes with the altar not with the stone.

238. 4. The plenary indulgence can be applied only to the person for whom the Mass is said, and if it is said for several the indulgence should be applied to one of them, because it does not admit of division, at least in the case of the deceased, and more probably also of the living.

The Mass need not necessarily be *de Requie* even when the rubrics permit it. The privilege may be local, that is, attached to an altar, so that those benefit by it who say or have Masses said

at that altar; or it may be personal, that is, granted to a priest who enjoys it independently of the altar at which he celebrates; or it may be granted in favor of certain classes of persons, for example, of the deceased members of a community.

The privilege may be attached to an altar or granted to a person for every day or for one or several days of the week, temporarily or permanently. All this should be indicated in some manner, and the Code prescribes the use of the simple inscription: Altar privileged permanently or temporarily, daily or not, according to the wording of the grant.

5. On All Souls' day all Masses enjoy the same privilege as if they were celebrated on a privileged altar. They can be applied for all the faithful departed, but the indulgence must be applied to one individual soul.

All the altars in a church in which the Forty Hours' Devotion is held enjoy the privilege.

6. The Church does not permit demanding a higher stipend for a Mass celebrated on a privileged altar. Violation of this rule, according to a declaration of Propaganda, would entail the loss of the personal privilege and that of the indulgence in case of local privileges. (Aug. 13, 1774.)

V. PROMULGATION OF INDULGENCES. (Can. 919-920.)

239. In order to prevent the spread of doubtful or false indulgences, the Church exercises strict control over their promulgation and divulgation.

1. Indulgences published at Rome for the whole Catholic world, *Urbi et Orbi*, either in the

Acta Apostolicæ Sedis, as according to present rule, or in some other authentic form, need no further publication or approval by the local Ordinary; any one who knows of them may take advantage of and propagate them. Nor would one receiving from the Holy See the grant of an indulgence of a private, personal character or permission to bless certain objects, have to present the concession to the Ordinary for recognition. (Vermeersch, n. 207.) But indulgences destined for the public welfare and granted to churches or also to altars, parishes, confraternities (Can. 713, § 1), even to churches of regulars and never yet published in Rome, need before divulcation the sanction of the local Ordinary. (Beringer, I, p. 127.) This law contains no annulling clause.

240. 2. For the publication of books, summaries, booklets, or leaflets containing the concession of indulgences the Code, after Leo XIII (Jan. 25, 1897), requires permission from the Ordinary of the diocese.

It demands the express authorization of the Holy See for printing in any language authentic collections of prayers and good works to which the Pope has attached indulgences, as also a list of papal indulgences and summaries of indulgences previously collected but never approved, and summaries now made up from various concessions. (Can. 1388.)

3. A person who has obtained from the Pope general indulgences must present an authentic copy of the concession to the Sacred Penitentiary under pain of nullity of the grant.

This rule applies only to general indulgences

intended for all the faithful, which all can gain anywhere and at any time, not to particular indulgences granted to certain persons, a community, a diocese, or attached to particular objects. (Sept. 16, 1915; A. A., p. 457.

VI. INDULGENCES GRANTED FOR CERTAIN DAYS OR FEASTS. (Can. 921-923.)

241. 1. *Day or Feast.* The concession of a plenary indulgence for the feasts of Our Lord or the Blessed Virgin holds for all the feasts found in the general Calendar of the Church, not for the others. Formerly the favor extended only to the principal feasts for plenary indulgences and to all the feasts in the general Calendar for the partial ones. (Cong. Indul., Sept. 18, 1862; coll., n. 392, ad 2^{um} et 4^{um}.) The present canon does not mention here partial indulgences.

An indulgence, whether plenary or partial, granted for the feasts of Apostles can be gained only on their *dies natalis*, spiritual birthday, feast or day when the liturgy commemorates their death, whether or not it is the real anniversary. Such would not be the feast of St. Paul's conversion, St. Peter's Chair, St. John before the Latin Gate.

242. 2. *Transfer.* Some indulgences are granted for certain feasts, days of special prayers, novenas, septenaries or triduums held before or after the feast or during the octave. The transfer of the feast may or may not involve the transfer of the indulgence also.

If the feast has a Mass and office but no solemnity and external celebration connected with it, and it is duly transferred in a permanent manner,

the indulgences are transferred with it. Thus if in a certain diocese, because of the occurrence of the feast of a local saint, that of St. Francis Xavier, had been transferred once and for all from the third to the fifth of December, even though it might not have any external solemnity, the indulgences granted for that feast could be gained in that diocese only on the fifth of December; but if in one year the occurrence of a Sunday would cause the transfer the indulgences would remain attached to the third.

If the feast is celebrated with some external solemnity, that is, with special services, solemn functions, gatherings of people, the mere transfer of the solemnity, whether permanent or accidental, carries with it the indulgences. Thus when All Souls' day, falling on a Sunday, must be held on Monday the plenary indulgence granted for each visit to a church becomes transferred to the Monday that year. (H. O., Dec. 14, 1916; A. A. S., 1916, p. 179.)

243. 3. *A Plenary Indulgence Granted Daily.* Such an indulgence, granted either in a permanent or only temporary manner, for a definite period of time, is one which any of the faithful may gain any day of the year, but each one of them only once a year unless the decree expressly states the contrary.

4. *Duration of Day.* On certain days indulgences, plenary or partial, may be gained on condition of visiting a church. The law permits in all such cases that the visit be made from noon of the preceding day till midnight of the day itself. Thus the visits required for the Portiuncula indulgences attached to the second day of

August may be made from noon on the first till midnight on the second of that month.

VII. LOSS OF INDULGENCES. (Can. 924.)

244. 1. Indulgences do not cease by the death of the grantor. They belong to the class of favors called *gratiæ factæ, not faciendæ*.

2. Personal indulgences cease with the death or extinction of the grantee, but moral persons lose their legal existence only by valid suppression or extinction of one hundred years' duration, and as long as one of the members of a collegiate body remains the rights and privileges of the body rest with him. (Can. 102.)

3. Local privileges cease by the destruction of the place, but if it be restored within fifty years the privileges revive (Can. 7); hence, as explicitly provided here, destruction of a church does not entail loss of indulgences attached to it provided it be rebuilt within fifty years under the same title and in the same place or about, which the Congregation of Indulgences interpreted to mean within thirty yards of the original location. The same principle probably applies to altars also.

4. In accordance with the general principle that real privileges cease by the total destruction of the object (Can. 75), the Code enacts here that indulgences attached to rosaries or other objects, like crucifixes, medals, etc., cease when these objects are completely destroyed, and it adds, or sold. Partial destruction does not have that effect if the object remains substantially the same. One of the crosses of the Fourteen Stations may be replaced without loss of indulgences. As in rosaries the blessing and indulgences are annexed

to the beads not to the chain, changing the latter would not cause the loss of the indulgences, although they may be suspended whilst the rosary has lost its form. The order of the beads does not matter, nor would the substitution of a few new ones constitute a substantial alteration.

The Code does not state nor imply that indulgenced objects lose their privileges when given away or loaned to another, but only when destroyed or sold. Formerly the apostolic indulgences attached to rosaries, crucifixes, etc., had a strictly personal character; they benefited only the person for whom they had been blessed or those to whom he would first distribute them. They could not be used by another for the gaining of indulgences. A decree of the Sacred Penitentiary (Feb. 18, 1921), approved by the Sovereign Pontiff, declared these restrictions abrogated. The apostolic indulgences thus partake of the nature of a real privilege; the objects to which they are attached may serve for different persons. (A. A. S., 1921, p. 163; Vermeersch, n. 208.)

ARTICLE II

THE GAINING OF INDULGENCES

(Can. 925-936.)

I. GENERAL CONDITIONS. (Can. 925, 927.)

245. 1. Only baptized persons free from excommunication, in the state of grace at least for the last prescribed work, and subject to the grantee, can gain indulgences.

(a) This excludes from participation in indulgences all non-baptized persons, over whom the Church can not exercise jurisdiction. It does not seem to exclude absolutely baptized non-Catholics who adhere to a false sect in good faith and without any serious fault of their own.

(b) The state of grace is certainly necessary for gaining indulgences and applying them to one's self; and also whenever the rescript demands as conditions confession, Communion, or a contrite heart, *saltem corde contrito*. Some theologians admit as probable the possibility of gaining some indulgences for the dead without the state of grace. While the sinner, they explain, can not and does not acquire a right to any favor for himself, he can perform certain works and to these the Pope attaches indulgences which he applies to the Holy Souls by the mere fact that he made them applicable, particularly if he made them applicable exclusively to the Holy Souls, like the *toties quoties* indulgences granted for the second of November.

(c) As the concession of indulgences implies exercise of jurisdiction, superiors can grant them to those only over whom they have authority, but the present law explicitly states that, in this matter, the authority of a local Ordinary extends to his subjects even outside of his territory and to strangers, *peregrini* or *vagi*, as also to all exempt persons while in the territory. All these, then, may, except for some provision to the contrary, benefit by local indulgences.

246. 2. For the actual gaining of indulgences one fulfilling the above conditions must, besides, have the proper intention and perform the pre-

scribed works at the time and in the manner specified in the concession.

(a) The actual or virtual intention of gaining the indulgences attached to the works performed certainly suffices, without the detailed knowledge of their number and nature.

Probably habitual intention once formed and never retracted, but without actual influence on the work, suffices also, but this remains doubtful, hence the practice recommended to all of renewing frequently and every morning the intention of gaining all the indulgences annexed to our good works.

(b) The conditions laid down in the concession must be adhered to most strictly, whether as to the nature of the works demanded or the time, place, or manner of performing them, under pain of losing the indulgences in case of a somewhat notable omission or change. Ignorance or good faith does not avail in this matter.

The person wishing to gain an indulgence must perform the prescribed works himself; he may, however, have another give alms for him or in his name.

II. SPECIAL PROVISIONS REGARDING PLENARY INDULGENCES. (Can. 926, 928.)

247. 1. A plenary indulgence remits all the penalty due to sin on condition, however, of being gained to its full extent. As this supposes very perfect dispositions and forgiveness of, therefore detachment from, even the smallest venial sin, it must often occur that plenary indulgences do not produce their effect fully; the legislator here states that they produce it then partially and in propor-

tion to the dispositions of the subject. This probably means that they remit the penalty due to the sins repented of, not the other. From plenary this indulgence becomes partial, but in a special sense.

Partial indulgences, as commonly understood, have their efficacy indicated in relation to the ancient canonical penances. Indulgences of one hundred days, one year, seven years, obtain that remission of penalty which we would obtain by one hundred days, one year, or seven years of the ancient canonical penance. Still, even this remains indefinite, as we do not know the exact degree of efficacy of the ancient penances themselves; and, moreover, according to places and times, they differed in severity and consequently in satisfactory value.

2. Except for an express provision to the contrary, a plenary indulgence attached to a certain work can be gained only once a day. By special, explicit concession some plenary indulgences can be gained as often as the work is repeated, for example, the indulgences attached to visits of churches on All Souls' day.

III. APPLICATION OF INDULGENCES. (Can. 930.)

248. 1. We can generally apply to ourselves the indulgences which we gain. Some, however, are applicable exclusively to the souls in purgatory; as, for example, those granted by Pius X for the second of November. (June 25, 1914.)

2. The Church does not allow application of indulgences to the living, not for any intrinsic impossibility, but rather for reasons of fitness, be-

cause the living can and should gain indulgences for themselves.

3. She permits, on the other hand and encourages, their application to the souls in purgatory. In modern times the Holy See had multiplied the indulgences admitting of such application, and the Code now explicitly states that, as previous decrees implied, except for some provision to the contrary, the faithful may apply to the Holy Souls all indulgences granted by the Sovereign Pontiff. More probably we can apply them not only to the Poor Souls in general, but to some of them in particular. This requires a special intention distinctly formed.

IV. PARTICULAR WORKS. (Can. 929-934).

249. 1. *Visit of a Church or Chapel.* (Can. 929.) 1. The grant may call for the visit of a specified church or shrine, or in general for the visit of a church or chapel, public or semi-public, excluding private or domestic ones (H. O., June 25, 1914); or for the visit of a church or public oratory. In this last case, the more common one, the visit of a semi-public chapel would regularly not suffice except by special Indult.

2. The Holy Office, however, by a general decree (Jan. 14, 1909), now embodied in the Code, authorized certain classes of persons, under well-defined conditions, to make those visits in semi-public chapels.

(a) The concession is made in favor of all the faithful of either sex who lead a life in common for a motive of perfection, of education, or health, and of such persons who live with them

and wait on them. It may, then, apply to members of Religious Communities or pious associations living in common even without vows, to students in Catholic colleges and seminaries, to the inmates of hospitals, asylums, homes for the aged, etc.; but not, for example, to prisoners, nor to soldiers in camps.

(b) This house or institution must have the sanction of the Ordinary and its erection the approval of the Bishop or Religious Superior.

Under these conditions, if the institution has no public church and the indulgence requires the visit not of a special church but only in general of a church or public chapel, the above mentioned persons may make it in the chapel in which they hear Mass on Sundays.

3. The visit supposes, besides the material fact of entering the church, some intention of honoring God, but not necessarily any formal prayer. A person who comes to church to adorn the altar visits it.

In case of impossibility of entering the church because of the crowd or for some other obstacle, it suffices, according to good authors, to pray near the door, particularly when one forms part of the visiting crowd. (Vermeersch, 218.)

250. 2. *Confession and Communion.* (Can. 931.) 1°. Whenever indulgences require confession and Communion, the present law permits the confession within the eight days immediately preceding the day set for the indulgence and during the octave immediately following it; it permits the reception of Communion on the preceding day and during the octave.

2°. To gain indulgences granted for triduums,

novenas, etc., it suffices likewise to go to confession and receive Holy Communion during the octave immediately following the completion of these exercises.

Octave in all these cases means eight days, without any special liturgical signification.

3°. Pious Christians who are in the habit of going to confession twice a month, except for some legitimate impediment, or of receiving Holy Communion daily, in the state of grace, with right intention and devotion, even though they abstain once or twice a week, may, by virtue of concessions made by Pius X (Feb. 14, 1906), confirmed and completed by the Code, gain all indulgences requiring confession, without actually approaching the sacred tribunal, excepting only the indulgence of the jubilee or one granted in the form of jubilee, which always demands a special confession.

Confession does not cease to be a condition for indulgences because a person has no mortal sin on his conscience, but then he does not have to receive absolution. (Cong. Indul., May 19, 1759; Dec. 15, 1841; Dec. Auth., n. 214, 295.)

251. 3. *Prayers for the Intention of the Pope.*

1°. When prayers for the intention of the Sovereign Pontiff form one of the works for the gaining of indulgences, this means vocal prayers; mental prayer alone would not suffice. The faithful may choose any prayer they wish unless a special one has been prescribed. According to common teaching, five "Our Fathers" and five "Hail Marys" fulfil all conditions, or even a shorter prayer if recited with great fervor.

2°. If indulgences are attached to a particular

prayer its recitation in any language permits their acquisition, provided the Sacred Penitentiary or one of the Ordinaries of the places in which that language is spoken guarantees the accuracy of the translation. Any addition, mutilation, or interpolation would cause the loss of the indulgences. Thus the Penitentiary has declared that if in the singing of the Litany of the Blessed Virgin *Kyrie eleison* is recited only once or the answer *Ora pro nobis* is not repeated after each invocation, the indulgences are not gained. (Jul. 21, 1919; A. A. S., 1920, p. 18.) The practice existing in some countries of adding to the first part of the "Hail Mary" in the recitation of the Rosary a few words recalling the mystery meditated upon, would have the same consequences, unless a special Indult or legitimate custom would justify it. (Jan. 22, 1921; A. A. S., p. 163.)

3°. One may gain an indulgence by reciting the prescribed prayer, for example, the Rosary, alternately with a companion or by simply following in one's mind while another recites it.

V. SPECIAL RULES. (Can. 932-936.)

252. I. *Supererogatory Works Required.* Unless expressly stated otherwise in the grant, a work otherwise obligatory by law or precept strictly binding in conscience can not serve for gaining an indulgence.

The law itself excepts good works performed as sacramental penance, by which we may at the same time gain indulgences and fulfill the obligation imposed by the confessor. The Congregation of Indulgences declared also in the name of the Pope (March 16, 1841) that the confes-

sion and Communion of Easter Sunday suffice for the fulfillment of the paschal precept and the acquisition of the indulgences of the papal blessing.

253. 2. *Distinct Works for Different Indulgences.* To the same object or place several indulgences may be attached on various titles, but the same individual work will not suffice for them all unless so expressly provided. Thus a Rosary may have received the Apostolic, Bridgitine, Dominican, and Crosier blessings, but regularly each one of these indulgences requires a distinct recitation of the Rosary. By special concession we may gain at the same time the Apostolic and Crosier or the Crosier and Rosary indulgences. (June 12, 1907.)

This rule does not apply to confession and Communion. We may on the same day gain several plenary indulgences each one of which requires the reception of penance and the Holy Eucharist. One confession and Communion will suffice for all. As said before, actual confession is not even necessary in the case of persons who habitually approach the sacred tribunal twice a month or the Holy Table every day, except for the jubilee indulgences. (Can. 931.)

254. 3. *Commutation of Pious Works.* (Can. 935.) By various Indults Popes formerly empowered confessors to commute the pious works prescribed for indulgences into others; but these concessions had remained very much limited both as to subject and object. Often they applied only to the sick or supposed extraordinary conditions, and they pertained almost exclusively to the visits of churches or Holy Communion.

The present law allows commutation in favor of any class of persons and in any case of legitimate impediment rendering impossible the fulfilment of the usual conditions for an indulgence.

The confessor alone has this power, not the pastor, still less the interested party himself. He may use it also outside of the confessional; he should use it only for serious reasons which would excuse from compliance with a grave obligation. The law leaves him judge of the validity of these reasons and free in the choice of the works he will substitute, within certain limits, however, set by papal Rescripts or Indults. He must take care that the substance of the indulgence be safeguarded and that the change bear only on accidental conditions. Indulgences granted for frequent Communion necessarily require this practice. The Church permits the substitution of other prayers by assisting at the recitation of these but demands the use of a crucifix blessed for this purpose. (Vermeersch, n. 221.)

255. 4. *Fulfilment of Conditions by Mutes.* (Can. 936.) Confirming concessions made by a decree of March 15, 1852, and completed by one of July 18, 1902, the Code offers to mutes the facility of gaining indulgences attached to public prayers by assisting at the recitation of these prayers by the rest of the faithful, raising meanwhile their mind and affections to God; and those attached to private prayers by saying them mentally or by signs, or perusing them with their eyes if they can read.

They do not have to form the words in any way or to move their lips; nor do they need now as

formerly recur to the confessor in every case. The present law speaks of mutes, not exclusively of deaf and dumb, and would apply to one without power of speech although not of hearing.

TITLE V

EXTREME UNCTION

(Can. 937-947.)

(Chardon, *De l'Extrême Onction*; Martène, o. c., Lib. I, c. vii; Kern, *De Sacramento Extremæ Unctionis*, Ratisbon, 1907; Catholic Encyclopedia, *Extreme Unction*; Canoniste Contemporain, Sept. 1921, p. 386; Bord, *l'Extrême Onction*, Bruges, Beyært, 1923.)

In an introductory canon determining in a general manner the essential elements or the matter and form of extreme unction, the Code defines it as a sacrament administered by the sacred anointings with duly blessed oil and the words prescribed in the Rituals approved by the Church.

CHAPTER I

THE MINISTER OF EXTREME UNCTION

(Can. 938, 939.)

256. 1. *Power Required for Validity.* Priestly powers are necessary and sufficient for the valid administration of this sacrament. We have no example of deacons ever delegated for this function. Ancient texts of Innocent I, St. Ce-

sarius of Arles, and others mention anointings with sacred oil performed by lay persons on members of their household or even on themselves, but this refers probably to pious practices without sacramental character. (Kern, o. c., p. 16; Boudinhon, *Revue Catholique des Eglises*, July, 1905.)

In the West extreme unction has commonly been administered by a single priest and in the East by several, seven or at least three. The Church of Rome admits both practices, but Benedict XIV demanded that when several priests officiate all should perform the unctions and pronounce the words of the form, and theologians question the validity of the sacrament administered by several priests, some of whom perform the rite and the others pronounce the words.

2. *Authority Needed for Lawful Administration.* The ordinary and legitimate minister of this sacrament is the parish priest of the place in which the sick person happens to reside at the time, even though he would not have a domicile or quasi-domicile there, except in a few cases specified by law. In all clerical Religious Communities the superior administers the last sacraments to his subjects; in houses of Nuns with solemn vows this function belongs to the ordinary confessor or to the one who takes his place; in other lay communities to the pastor or chaplain who has received this power from the Ordinary. (Can. 14, § 1-3; 397, n. 3.)

In cases of necessity, or with the at least presumed consent of the pastor or Ordinary of the place, any priest may give extreme unction.

The Code has not renewed the penalties enacted by ancient legislation against regulars who interfered with the rights of parish priests in this matter.

3. *Duties of the Minister.* Priests who have the care of souls are bound in justice personally or through others to administer extreme unction to the members of their flock, particularly when they ask for it.

They may have to do so with serious inconvenience or danger to themselves, as in times of epidemic or contagious diseases, even at the cost of their life if the extreme or grave need of the neighbor and the prospect of rendering effective service were certain, which will, however, occur rarely.

In cases of necessity all priests are under a similar obligation, but one of charity, the gravity of which depends on the urgency of the need.

CHAPTER II

THE RECIPIENT OF EXTREME UNCTION

(Can. 940-944.)

257. 1. *Conditions for Valid Reception.* Extreme unction can be validly received only by the faithful who after reaching the use of reason find themselves in danger of death from sickness or old age.

1°. This sacrament, like all the others, presupposes baptism, and as one of its chief purposes is purification or preservation from sin, only those need it who have committed or may commit at

least light offences, who, therefore, enjoy the use of reason or have enjoyed it at some time. Hence, unlike confirmation or the Holy Eucharist, extreme unction has never been given to children, but exclusively to Christians capable of penance.

Children become capable of receiving it as soon as they have sufficient discretion to sin even venially. Some ancient statutes speak of the age of ten, fourteen, or even eighteen (Nantes, Rouen, 1245), but others, like those of Cahors, Rodez, and Tulle admit that some children may receive it at the age of five or six. (Martène, art. 1.)

Some authors would have denied it to neophytes just baptized or to persons known for their innocence of life, but the Church never accepted their views.

258. 2°. Extreme unction was instituted for the sick, and as St. James and Catholic tradition imply or explicitly declare, it requires for valid administration serious bodily sickness or infirmity from which results a grave danger of death.

Some of the schismatic Churches anoint also persons in good health and historians quote examples of this practice in the past, but these represent only isolated abuses and perhaps more apparent than real exceptions to the universally observed rule.

How grave the illness should be or how proximate the danger of death St. James and tradition have not defined with strict accuracy. Various indications in ancient Rituals imply that frequently the sick received extreme unction in church, kneeling or sitting; in some places the rites were repeated for seven days in succession.

This does not suppose a subject at the point of death. Only about the twelfth or thirteenth century did people commence in the Western Church to look upon extreme unction as the sacrament of the dying. Authors assign various causes for this change, amongst others, the expenses then connected with the reception of the sacrament, superstitious ideas spread in some countries that anointed persons could not in case of recovery make a will, walk bare-footed, eat flesh-meat, etc.; the teaching of some theologians, particularly of the Scotist school, who, considering final remission of venial sin as the chief effect of the sacrament, discouraged administration to any but persons no longer able or likely to sin even venially. All this led to delays in the reception of extreme unction till the last moment and in some countries, particularly in Bavaria, to complete neglect. (Kern, o. c., p. 282.) Church authorities endeavored to remedy these abuses and remove their causes or occasion, but without complete success. Traces of erroneous opinions lingered for a long time in the popular mind and habits once formed proved very difficult to eradicate.

The Council of Trent prescribes administration of the unction to the sick, particularly to the dying, but not exclusively to the latter. (Sess. XIV, 3.) The present law demands for it simply danger of death, which evidently implies real, serious, yet not necessarily imminent, danger of death.

259. 3°. This danger must arise from sickness or, as explicitly stated in the Code, from old age.

Criminals about to suffer death, soldiers on the eve of battle, women before childbirth, can not

without any other reason receive extreme unction. But illness of any kind and whatever its causes suffices, whether due to external violence, a fatal wound, an operation, childbirth, poisoning, etc. In cases of lingering diseases the patient can receive the sacrament validly as soon as he becomes dangerously ill, even though he have well-grounded hopes of living for several months. (Propaganda Fide, Feb. 20, 1801, Coll., n. 651.) Old age amounts to serious infirmity when decay has progressed so far that death appears probable within a short time.

4°. Repetition. Some writers of the twelfth century, refuted by Peter the Venerable and Peter Lombard, advanced the theory that like the sacraments imprinting a character extreme unction could be received only once in life. Others, among them Durand of Mende, permitted its reception only once a year; others, again, only once during the same sickness or once within the same month, whether a new danger arose or not. Some, on the contrary, allowed its repetition every month during the same sickness, even though the danger continued the same.

The Code clearly states that extreme unction may be repeated during the same sickness, but on condition that, after receiving it the patient recovers sufficiently to get out of danger and then becomes once more dangerously ill. It does not say how long the recovery should last. Evidently an improvement of a few hours would not suffice to prove the cessation of danger, but it does not have for that to continue for a whole month.

5°. In doubt. When there remains a serious doubt concerning the existence of these essential

conditions, the possession of the use of reason by the patient, the gravity of his illness, his death, the sacrament should be administered conditionally.

260. 2. *Dispositions Required in the Subject.* (Can. 942, 943.) This sacrament requires the state of grace or at least sorrow for sin and the intention of receiving it.

1°. It should not be administered, therefore, to patients who remain manifestly and obstinately attached to mortal sin, such as, for example, would refuse to make restitution, to leave a free proximate occasion of sin, to sever connection with a condemned society, to retract the order given for the cremation of their body, etc.

The law speaks here of manifest impenitence; it would not apply to persons known as sinners but found unconscious without any indications either of repentance or of obstinacy in their evil ways. In all cases of doubt the Church grants them the sacrament conditionally.

2°. Implicitly or even interpretatively manifested desire of the sacrament suffices for its valid and fruitful reception. The Church directs its ministers to administer it without any condition to persons now unconscious or deprived of the use of reason but who when in possession of their faculties implicitly manifested or would have likely manifested a wish for it had they thought of it.

261. 3. *Necessity of this Sacrament.* (Can. 944.) 1°. Extreme unction is certainly not absolutely necessary in itself for salvation, that is, not necessary by necessity of means, at least ordinarily. It might be so under special circum-

stances, as if a person in a state of grievous sin and unable to elicit an act of perfect contrition, but capable of attrition, had no opportunity of receiving any other sacrament.

As to its necessity of precept or as to the existence of a positive precept commanding its reception, opinions differed; the majority of theologians denied it, although they severely condemned negligence due to contempt.

The Code declares it unlawful for any one to neglect this sacrament, that is, to omit its reception freely and without legitimate excuse, independently of any contempt. This supposes some obligation, although not necessarily a grave one.

2°. All persons interested in the sick, pastors, physicians, nurses, relations, friends, and even neighbors as far as circumstances may permit and prudence suggest, should use all care and diligence to have them receive extreme unction while in full possession of their faculties, so that they may not lose the spiritual and bodily comfort it would bring them in their infirmity. Ancient ecclesiastical legislation contained severe penalties against physicians who neglected to give timely warning to their clients of approaching death and the necessity of preparing for it.

CHAPTER III

rites and ceremonies

(Can. 945-947.)

262. 1. *Remote Matter.* The Church has always understood the words of St. James "anointing him with oil" (v, 14) of olive oil, and she

has never used any other for extreme unction. This oil must be blessed by the Bishop or by a priest who has received power for this from the Holy See. In the Eastern Churches priests have a general delegation and they impart the blessing before each ceremony. In the West they obtain the oil every year from the Bishop, who blesses it on Maundy Thursday. It must be blessed for that particular purpose. The oil of catechumens or the chrism would probably not suffice for the valid administration of this sacrament. Only urgent necessity would justify its use.

The pastor must preserve the holy oil for the sick in a neat and properly decorated place, in a vessel of silver or white metal. He should not keep it in the rectory except in cases of necessity or for some other reasonable cause and with the permission of the Ordinary. (Can. 735.)

263. 2. *Proximate Matter.* 1°. Unction with oil constituted at all times the essential rite or proximate matter of the sacrament of extreme unction, but as to the number of unctions made or the parts anointed ancient documents show a great variety of practice. Some speak simply of unction as if one sufficed, others mention unctions of the forehead, chin, cheeks, nostrils, neck, hands, throat, knees, feet, breast, etc. (Martène, l. c., viii.) The unction of the five senses, never extensively practiced in the East, did not spread very widely in the West till the eleventh, and became really universal only in the seventeenth, century. The Roman Ritual which prescribed it added the unction of the feet and for men that of the loins.

It allowed omission of this last unction when

the condition of the patient rendered it really difficult, but Roman Congregations insisted on various occasions on fidelity to the anointing of the feet. Missionaries found it hard in the beginning to bring Chinese women to a proper understanding and appreciation of this rite; so much so that the Holy Office thought it advisable to tolerate omission in certain cases of the sacrament of extreme unction. (March 23, 1656; Coll., n. 126.) By the end of the eighteenth century, as the Synod of Su-Tchuen (1803; Coll. Lacensis, VI, p. 593) informs us, opposition to the unction of the feet had practically disappeared in those regions, but it existed in others and kept some otherwise well-disposed persons from the reception of the sacrament.

Theologians generally considered as at least probably valid and lawful in cases of necessity the administration of extreme unction with one anointment and a general form. (St. Alphonsus, vi, n. 710; Benedict XIV, *De Synodo Diœcesana*, lib. viii, c. 3, n. 5.) The Holy Office gave official sanction to this teaching (Ap. 25, 1906; Jan. 31, 1907; Jan. 31, 1917) and even implicitly affirmed the validity of this rite, since it directed priests to use it in urgent cases without condition and without necessity of repeating it afterwards if time permitted, but only of completing it by supplying the unctions omitted.

2°. The Code contains no theoretical decision on this subject but merely lays down practical rules.

(a) It commands strict observance of the prescriptions of approved Rituals as to the mode and order of the unctions.

(*b*) In cases of necessity it declares sufficient a single unction of one of the senses, preferably, although not necessarily, of the forehead, with obligation of supplying afterwards the other unctions in order that the rite may not remain incomplete, not because of any doubt concerning its validity.

(*c*) It abolishes for all the unction of the loins and allows omission of the unction of the feet for any reasonable cause.

(*d*) Except in cases of grave necessity it does not permit the use of an instrument, a brush, a little stick, etc., for the unctions, but enjoins on the minister to perform them with his own hand by direct touch; the Ritual says with the thumb. 264. 3. *Form*. In conformity with the instructions of St. James, a prayer has always accompanied the anointing of the sick, but we find great variety in the formulas used at different times and in different Churches. (Martène, l. c., vii, 4; Kern, o. c., p. 142.) For several centuries the Western, and also although less extensively the Eastern, Church used an indicative, whilst at present they prescribe a deprecatory, form. Some forms were quite short, others notably longer.

Without attempting to determine what in any one of them pertains to the substance, the Code here again gives as the practical rule from which we should not depart conformity to the prescriptions of the Ritual of our Church. A shorter formula accompanies the single unction performed in cases of necessity: "Through this holy unction may the Lord pardon thee whatever sins or faults thou hast committed." (H. O., Ap. 25, 1906.)

TITLE VI

HOLY ORDERS

(Can. 948-1011.)

(Martène, o. c., L. I, c.s viii; Chardon, o. c., De l'Ordre; Hallier, De Sacris Electionibus; Gasparri, Tractatus Canonicus de Sacra Ordinatione, Paris, 1894; Many, S.S., Prælectiones de Sacra Ordinatione, Paris, 1905; Vermeersch, o. c., n. 233; Blat, o. c., p. 356; Prümmer, O.P., Manuale Juris Ecclesiastici. 1922.)

The Code treats here of the sacrament of Holy Orders from the strictly canonical point of view, leaving to theologians even more exclusively than in the previous titles all questions pertaining to the matter and form of the sacrament, to the sacramental character of each Order and all others of a dogmatic nature.

After three introductory canons it deals successively in six distinct chapters with the Minister, Subject, Prerequisites, Rites and Ceremonies, Time and Place, Registration and Attestation of Ordination.

PRELIMINARY NOTIONS. (Can. 948-950.)

265. 1. By Order or Ordination in general we understand here a sacred rite by which the clergy are separated from the laity and set aside for the government of the faithful and divine worship

in accordance with the will of Christ, who established in His Church a hierarchy of jurisdiction and one of Orders.

2. In the Latin Church the hierarchy of Orders includes seven degrees besides the episcopate, *viz.* the priesthood, diaconate, subdiaconate, the orders of acolyte, exorcist, lector, and door-keeper.

Giving official sanction to a long-received practice, the Code reserves in its canons the name of Sacred or Major Orders to the first three, priesthood, diaconate, and subdiaconate, and that of Minor Orders to the other four. The episcopate stands by itself, possessing all the excellence and prerogatives of Major Orders and more; it is usually designated by its special name.

The subdiaconate became classed among Major Orders about the twelfth century after connection with it of the strict obligation of celibacy and decrees of Popes declaring subdeacons eligible to the episcopate. (Wernz, II, n. 20.) Among the Greeks it remains still one of the Minor Orders.

3. The conferring of the episcopal character usually goes by the name of consecration. As tonsure is certainly not an Order, canonists did not always apply to it the rules regarding Orders or ordinations, but the Code states here explicitly that unless the context or the subject-matter clearly calls for a different interpretation, in law, the terms ordaining, order, ordination, sacred ordination comprise the episcopal consecration, the seven Orders mentioned above, and tonsure also.

CHAPTER I

THE MINISTER OF ORDINATION

(Can. 951-967.)

I. POWER NECESSARY AND SUFFICIENT FOR VALID ORDINATION. (Can. 951.)

266. 1. The ordinary minister of ordination is the duly consecrated Bishop, that is, regularly, the conferring of Orders supposes episcopal character, and any one who has received episcopal consecration can validly give all the Orders under any circumstances, the episcopate included.

2. Extraordinary minister. Priests do not possess power to confer Holy Orders, but they may receive it for some of them by general delegation from the common law or by special Indult.

By common law Cardinals (Can. 239, § 1, 22°), Vicars and Prefects Apostolic, Abbots and Prelates Nullius (Can. 957), governing Abbots of regulars (Can. 964), may give tonsure and Minor Orders under conditions laid down in the Code and required also for the validity of the act.

By special Indult Popes occasionally grant similar powers to other priests within limits specified by them. They might delegate them also for the ordination of subdeacons; they have done so in the past, but at present they usually limit the concession to Minor Orders.

Many, principally among ancient canonists, affirm the existence of such delegations for ordi-

nations to the diaconate; they quote amongst other examples of this a Bull of Clement VIII (*Exposcit*, v id. Ap. 1489) allowing Cistercian Abbots to ordain the deacons of their Order. Some, however, doubt the authenticity of this document or deny that it contains mention of deacons. (Gasparri, o. c., n. 798.) If the grant ever existed it has lost all juridical value, for Leo XIII, in a Brief (*Non mediocri*, July 30, 1902) confirming the privileges of the Cistercian Order, includes for the Abbots that of conferring on their subjects tonsure and Minor Orders only. (Many, o. c., n. 59.)

The opinion of a few ancient authors that the Pope has power to delegate a priest for the sacerdotal ordination has little if any foundation in tradition. Nor does one not endowed with the priestly character, whatever his dignity otherwise, ever receive power to confer any Orders.

II. ORDINATIONS RESERVED TO THE POPE.

(Can. 952.)

267. Without authorization from the Holy See no one may promote to higher Orders a person ordained by the Roman Pontiff or his special delegate.

For the origin of this discipline, which now rests on formal law, canonists go back to the so-called *Dictatus* of St. Gregory VII, now generally accepted as authentic since the publication of that Pope's Register, to a Decretal of Innocent III (1202, 12, X, I, 11), and to a letter of the same Pope to the Archbishop of Milan. (Benedict XIV, *In postremo*, Oct. 20, 1756.) Custom had

given the force of general law to these texts, if some of them did not possess it originally. (Many, o. c., n. 43.)

III. EPISCOPAL CONSECRATION. (Can. 953.)

268. 1. In the ancient Church, and even under decretal law, the Metropolitan consecrated the suffragan Bishops and the latter the Metropolitan, as is still done in the Greek Church. When about the fourteenth century the Roman Pontiffs reserved to themselves the choice and appointment of Bishops, they reserved also their consecration. This discipline found expression in a rubric inserted in the Roman Pontifical, forbidding any one to consecrate a Bishop without authorization from the Holy See or without apostolic mandate. The Code has confirmed the existing legislation.

Before proceeding to the ceremony of consecration the officiating Prelate must have received the mandate either orally or in the form of an apostolic letter. Official information that the mandate has been issued and expedited would suffice, but not a merely private report, however reliable. Ordinarily the Bull of appointment contains permission for consecration by any Bishop in communion with the Apostolic See.

2. According to ancient tradition and present law, the consecrating Bishop must have two other Bishops to assist him, unless the Holy See dispenses from this rule and authorizes the use of two priests as assistants. Leo XIII made this concession to the Bishops of Latin America for all cases of necessity. (*Trans Oceanum*, Ap. 18, 1891.) We find examples of the same dispensation for missionary countries at least as early as

the year 1562. (Collect., n. 177; Benedict XIV, *De Synodo Diœcesana*, L. XIII, c. 13.)

IV. ORDINATION BY THE PROPER BISHOP.

(Can. 955-957.)

269. 1. *Right and Duty of the Proper Bishop.*

1°. Councils and Popes have repeatedly affirmed the unlawfulness of an ordination received from any other than the proper Ordinary of the candidate or one authorized by him. The conditions for subjection to a Bishop in regard to ordination have varied, but the rule has always remained the same: Ordinaries should ordain only their own subjects and candidates ought to seek ordination from their Ordinary or with his permission.

2°. Unless prevented by a just cause, a Bishop should ordain his own subjects himself. The Council of Trent mentioned as just cause sickness, without excluding others.

A Bishop of the Latin Church would, however, need an Apostolic Indult to confer Orders on one of his subjects belonging to an Oriental rite.

270. 2. *Who is the Proper Bishop.* 1°. Ancient Discipline. A Synod of Carthage (348, Can. 5) decreed that a Bishop should not ordain a layman belonging to another Bishop's diocese against the latter's wishes, and this may have become the general law of the African Church, but usually when dealing with this matter Councils speak only of clerics and of their dependence on the Bishop who has conferred some Orders upon them. (Sardica, 343, Can. 18; Nicæa, 325, Can. 16; Chalcedon, 451, Can. 20, 23; D. lxxi, 1.) Apparently candidates could freely choose

their own Prelate, but by the first ordination they became attached to a particular church and could not leave it without the Ordinary's permission, nor could another Bishop lawfully promote them to higher Orders.

Till the eleventh century origin or domicile played a very secondary part in determining the proper Bishop for ordination. (General Legislation, n. 243.) They acquired greater importance with the multiplication of absolute ordinations, which did not imply connection with any particular church. At the end of the twelfth century Clement IV officially recognized the right of Bishops to ordain candidates born or possessing a benefice in their diocese. (1190; 1, I, 9, in Sexto.) Boniface VIII confirmed this legislation and recognized the same right of the Bishop of the place of domicile. (1299; ib., c. 3.) A custom sanctioned afterwards by the Council of Trent (Sess. XXIII, de Ref., c. 9) added familiarity or continuance for three years in the service of a Bishop as another manner of becoming his subject for the purpose of ordination.

The same candidate might thus have several proper Bishops and lawfully receive holy Orders from the Ordinary of his place of birth, or of domicile, or of benefice, as also from the one in whose service he had remained for the required length of time. He might receive some of the Orders from one of these Bishops and the others from another. This was known as "variation." (Const. *Speculatores*, Nov. 4, 1694; Many, o. c., n. 28-42.)

A Bishop could, moreover, transfer to another the rights he had over a cleric and excorporate

him, so that he might become affiliated with or incorporated into, another diocese. The ancient law did not mention excorporation or incorporation of laymen, as this regularly presupposes canonical affiliation by ordination, but in modern times, it had existed in practice in several countries, and a decree of Nov. 24, 1906, had given it official recognition; the Bishop of a lay candidate's place of origin, for example, could give him over to another local Ordinary, who thus became his proper Bishop.

271. 2°. Present Law. In determining the proper Bishop for the ordination of seculars the present law considers primarily the actual domicile of the candidates and also, but very secondarily, their place of origin. (Can. 90.) It no longer takes into account benefice or familiarity, nor does it provide for the excardination of lay persons.

In reality, the Bishop of the candidate's domicile, and he alone, always has the right of ordaining him, with this condition only, that, if he is not at the same time the Bishop of the candidate's place of origin, the latter will have to promise under oath before ordination to remain permanently in the diocese. This promise, however, is not required of a cleric already affiliated with the diocese by tonsure, nor of a candidate ordained by his proper Bishop but for another one, as Can. 969 § 4 permits, nor of a Religious. (Can. 964, 4°.)

A person without actual domicile and not yet affiliated with any diocese has no proper Ordinary for ordination. He must acquire a domicile before receiving Orders or apply to the Holy

See for a dispensation. (Com. Int., Reply to Card. Logue, Aug. 17, 1919; Irish Theological Quarterly, Oct. 1919, p. 391; *Monitore*, Feb. 1920, p. 57.) Quasi-domicile does not suffice here.

The acquisition or loss of domicile for ordination follows at present the same rules as for other matters. (Can. 92; General Legislation, n. 195, 201, 202.) A minor retains the domicile of his parents, but nothing proves that once of age he can not lose it before he acquires one of his own.

Whilst the present law does not admit excardination of lay persons it allows their ordination by the proper Bishop for another one, which amounts to a transfer of rights or has the same effects. (*Canoniste Contemporain*, 1918, p. 290-313; Jan. 1922, p. 11.)

272. 3. *Authority of Vicars and Prefects Apostolic, Abbots, and Prelates Nullius.* (Can. 957.)

1°. If they possess the episcopal character they enjoy the same rights and privileges in regard to ordinations as diocesan Bishops. Formerly Abbots or Prelates Nullius could not ordain their secular subjects but only the members of their Order; the present law does not make that distinction, thus notably extending their powers.

2°. If they have not received the episcopal consecration they can nevertheless, within the boundaries of their territory and for the duration of their office, confer tonsure and Minor Orders on their secular subjects and on all others, secular or regular, who present the dimissorial letters required by law. They must, however, under pain of nullity of the act adhere strictly to these limita-

tions and not ordain outside their district or after going out of office.

V. ORDINATION WITH DIMISSORIAL LETTERS FROM THE PROPER ORDINARY. (Can. 958-963.)

273. 1. *Nature of Dimissorial Letters.* When the proper Ordinary can not for some legitimate cause ordain his own subjects he authorizes or delegates some one else to give them Orders in his place. He may grant this permission orally, but more regularly he does so in a written document called dimissorial letters, as distinct from testimonial letters, which merely testify to the fitness of a subject, or from ordination letters, which certify the reception of Orders, or from an *exeat*, which contains the excardination of a cleric, that is, leave for him to transfer his affiliation to another Ordinary.

2. *By Whom Issued.* For the ordination of seculars, besides the Sovereign Pontiff, the following can grant dimissorial letters as long as they retain jurisdiction in their respective territory.

(a) The proper Bishop, after taking possession of his see even before consecration, and an Archbishop before receiving the Pallium.

(b) The Vicar General, but only by special mandate from the Bishop, that is, by concession of powers not attached to the office even though expressed in general terms. Some ancient canonists found this special mandate sufficiently implied in the Ordinary's departure for distant countries; nothing in the present law suggests this interpretation.

(c) The Vicar Capitular or Administrator with the consent of the chapter or of the diocesan

consultors after one year's vacancy; during the first year he may grant dimissorials only to those called *arctati*, that is, in the necessity of receiving a certain Order because a benefice to which they have been appointed, elected, or nominated requires it, or because the needs of the diocese demand their appointment to a certain office which supposes it. This last clause, not found in the ancient law, would seem to imply that scarcity of priests in a diocese might justify an Administrator in issuing dimissorial letters before the end of the first year of vacancy; in such cases he would probably prefer to ask for special faculties if circumstances permit, as they generally do.

(*d*) Vicars and Prefects Apostolic, Abbots, and Prelates Nullius, even though not consecrated Bishops, may under the present law grant dimissorial letters for both Major and Minor Orders.

The legislator warns the Vicar Capitular or Administrator not to grant dimissorials to those whom the Bishops would have rejected. This rule would not apply strictly to those whose ordination would have been simply deferred.

274. 3. Testimonials They Presuppose. (Can. 960.) 1°. The Ordinary who grants permission for the ordination of one of his subjects explicitly or at least implicitly vouches for his fitness, but he can not legitimately do so unless he has procured all the testimonials, reports, or certificates demanded by law for ordination, as specified in Can. 993-1000.

2°. The dimissorials granted by the proper Ordinary guarantee the candidate's worthiness up to the moment they were issued; if after that time and before ordination he remains long enough

in a certain place to incur an irregularity and needs further testimonials the ordaining Prelate should not fail to obtain them.

3°. The ordaining Prelate will gather himself the necessary information if it is in his own diocese that the candidate has lived long enough to incur irregularities and need testimonials from him.

275. 4. *To Whom Directed.* (Can. 959, 961.)

1°. The Ordinary who has authority to issue dimissorial letters may use them himself, that is, make the ordination for which he grants them, if he possesses the necessary power of Order. This would apply also to Abbots or Prelates Nullius.

2°. The proper Bishop issuing dimissorial letters may send them to any Bishop of the same rite in communion with the Holy See. To send them to one of a different rite he would need an Apostolic Indult. He may send them to an explicitly designated Bishop, or he may leave to the ordinand all freedom to choose one among several or any one in communion with the Holy See.

The present law grants the same liberty to suburbicarian Cardinal-Bishops as to others; they no longer have to direct dimissorial letters to the Cardinal Vicar of Rome.

Although this canon speaks only of the proper Bishop, the principle laid down here no doubt applies to all who can grant dimissorial letters for the ordination of seculars, as explained above. (Can. 958.)

276. 5. *Effect.* (Can. 962.) Any Bishop, upon receipt of legitimate testimonial letters, may ordain a candidate not subject to his jurisdiction, provided he has no reason to doubt their genuine-

ness. He does not have to make personal investigations. In case of delay of the ordination he might have to procure further testimonial letters. (Can. 994, § 3.)

6. *Limitations and Revocation.* (Can. 963.) The Ordinary who issues dimissorial letters may grant them with certain restrictions regarding, for example, their duration, the choice of the ordaining Prelate, etc., or on certain conditions, like the passing of an examination.

He or his successor may revoke them, but they do not lose their juridical value by the mere fact that he goes out of office or that another takes his place. Dimissorials granted by the Administrator during the vacancy remain effective under the new Bishop, unless he positively withdraws them.

VI. ORDINATIONS OF RELIGIOUS. (Can. 964-967.)

(Hallier, o. c., P. I, sect. i, app.; Many, o. c., n. 156-191; *Periodica de Re Canonica et Morali*, 20 Martii, 1920 (16); *Canoniste Contemporain*, Mars 1922, p. 103.)

277. 1. *Ancient Discipline.* In the beginning local Ordinaries possessed absolute and exclusive right to ordain monks residing in their diocese (Carthage, 419, Can. 80); only in the sixth century do Councils require for this the Abbot's consent. (Agde, 506, Can. 27.) In the thirteenth, after the rise of the Mendicant Orders, Popes granted to some of them, first to the Friars Minors and then to others, permission to go for ordination to any Bishop in communion with the Holy See. (Clement IV, *Virtute Conspicuos*, § 7, 1265; Sixtus IV, *Regimini Universali*, § 7, 1474.) At the time of the Council of Trent

practically all regulars enjoyed the same privilege.

The Council seemed to restrict it considerably, by enacting that henceforth, except for a grave reason, all would have to receive Holy Orders from their proper Bishop and not without testimonial letters from him. (Sess. VII, de Ref. c. ii; XXII, c. viii.) Regulars maintained against Bishops that these decrees did not concern them and St. Pius V, a Dominican, sustained their contention. But his successor, Gregory XIII (*In tanta*, March 1, 1583), having found it necessary to affirm the universal application of the Tridentine law, controversies revived with added vehemence. The dispute was practically settled by Popes Sixtus V and Clement VIII (1596), who confirmed the right of regulars to give dimissorial letters to their subjects, but with obligation of directing them to the local Ordinary, except in a few specified cases. (Benedict XIV, *Impositi Nobis*, 1747, § 3-5; Many, n. 158.) Special Indults, particularly since the seventeenth century, had extended the same legislation to many Congregations with simple vows.

278. 2. *Present Law.* 1°. Members of exempt Religious Orders, whether these possess the privilege by common law or special concession, are ordained with dimissorial letters from their major superiors, Provincial or Superior General, and no Bishop could lawfully ordain them without these letters.

Many non-exempt Congregations obtain faculties to ordain their subjects in the same manner.

2°. If the Superior who has authority to grant dimissorials is an Abbot actually in office with real

ruling power, not a merely titular or commendatory or retired Abbot, he can give tonsure and Minor Orders, provided the ordinand be his subject at least by simple profession and he have received the priestly ordination himself and the abbatial blessing. The absence of one of these conditions, as now explicitly declared, would render the act invalid, unless the Abbot had the episcopal character. The Code revokes all privileges to the contrary. An Abbot, therefore, can certainly not ordain before receiving the blessing, nor if he is not a priest. He does not have to be *nullius*.

3°. The Religious Superiors thus authorized to grant dimissorial letters for the ordination of their subjects can grant them only for tonsure and Minor Orders to those who have simply taken the triennial vows which regularly precede perpetual profession, simple or solemn. (Can. 574.) For Sacred Orders exempt Religious have to wait till they have taken perpetual vows, unless they obtain special permission from the Holy See.

279. 4°. In all cases not included in the preceding rules Religious come under the same law for ordinations as seculars. Members of Congregations that have no faculties to grant dimissorial letters to their subjects receive them from their own local Ordinary. Even if the Congregation possessed such faculties superiors can not use them for promotion to Sacred Orders of candidates who have not yet taken perpetual vows. Formerly some could, but the Code withdraws all such concessions. Non-exempt Religious remaining under the authority of the local Ordinary may always

be ordained by him; in this regard the domicile of Religious is in the house to which they belong independently of intention, and they have no oath to take when this is not their place of birth. (Can. 956; *Commentarium pro Religiosis*, Ap. 1924, p. 177.)

280. 5°. Religious Superiors who grant dismissorial letters for the ordination of their subjects must direct them to the Bishop of the place in which is located the house to which the ordinands belong as members of the religious family, whether permanently or temporarily, as if they had come there solely to pursue their studies. (*Commentarium pro Religiosis*, Sept. 1921, p. 300.)

6°. They may, however, direct the dismissorial letters to some other Ordinary in the following cases, but in these alone: (*a*) when the diocesan Bishop gives them permission to do so; (*b*) when he belongs to a different rite; (*c*) if he is absent even though he would have some one to take his place (Many, l. c., p. 382); if, although present, he does not, personally or through another, hold ordinations on the next regular ordination day, not including in this Sundays and feast-days of obligation, as the Code here refers only to the six days of the year set aside for ordinations by ancient tradition (Can. 1006, § 2); (*d*) during the vacancy of the episcopal see if the Administrator of the diocese does not possess episcopal power of Order; this implies that, under the present law, if he does possess it he has the right to ordain Religious.

In these cases the ordaining Bishop must receive an authentic attestation of the existence of

one of these reasons from the episcopal court, that is, from the Vicar General of the Bishop who should regularly make the ordination or the Chancellor of the diocese or some other official, who signs and seals the document with the diocesan seal. (Can. 966.)

7°. The Code, after Benedict XIV (*Impositi Nobis*), warns Religious Superiors against using any fraudulent means to deprive the diocesan Bishop of his right, such as sending his subjects to another house for that purpose, or delaying intentionally issuance of the letters to the time when he knows that the Bishop will absent himself or will not hold general ordinations.

Superiors presuming to disobey these rules incur *ipso facto* suspension from the celebration of Mass for a month. (Can. 2410.)

Some Orders, like the Society of Jesus, have the privilege of sending their subjects for ordination to any Bishop they choose; the Code does not revoke it.

CHAPTER II

THE SUBJECT OF ORDINATION

(Can. 968-991.)

GENERAL RULES. (Can. 968-972.)

287. 1. Conditions for the Validity of Ordination. Ordination supposes in its subject, as necessary conditions for its validity, the male sex and the baptismal character, besides the proper intention and freedom.

1°. The divine positive law excludes women from all strictly sacerdotal functions. The Fathers explained in that sense the teaching of St. Paul (I Cor. xiv, 34-35; I Tim. ii, 11) and the Church condemned as heretics the Pepuzians or Quintillians, a Montanist sect, and the Collyridians, who admitted women to the priesthood.

The same exclusion holds in regard to the ministerial functions of the diaconate, which are of divine origin and pertain to the ministry of the altar.

As to the functions of the lower Orders, which more probably have a merely ecclesiastical origin, the Church might entrust them to women, but she does not and reserves to men exclusively the dispensation of the sacramentals and performance of liturgical rites, as Christ had reserved to them the administration of the sacraments and the offering of the sacrifice.

Ancient documents often speak of widows, then of deaconesses, of their ordination and duties closely resembling those of deacons, but this refers to dedication ceremonies without sacramental efficacy and to functions without strictly liturgical character. (Many, n. 72-75; Wernz, II, n. 80; Gasparri, n. 122; Thomassin, o. c., P. I. L. III, c. 50-53; Martène, o. c., L. II, c. 7; Bingham, II, 26.)

2°. The Church has always considered baptism, understanding by this baptism of water and not merely of desire, as the gate to all the other sacraments, Orders not excepted, and consequently from the beginning she adopted the rule, afterwards embodied in her legislation, of treating as null all ordinations received by invalidly

baptized persons. (Nicæa, 325, Can. 19; I, X, III, 43.)

3°. Children and permanently demented persons can validly receive Holy Orders as well as baptism, confirmation, and the Holy Eucharist, although for obvious reasons ecclesiastical law forbids such ordinations. In such cases no intention is required; in adults, however, an intention, if not actual or virtual at least habitual that is once formed and not retracted, is necessary for the validity of the act. A few canonists would admit as sufficient a merely external intention, as found in a man who would freely go through the ordination ceremony, although he would not want to receive Holy Orders. (Gasparri, I, 644; Vermeersch, n. 143.) According to common teaching, such an ordination would be invalid or at least very doubtful. (Many, n. 313; Wernz, II, 82; H. O., March 2, 1842; Nov. 28, 1900.)

282. 2. *General Conditions for the Lawfulness of Ordination*: 1°. Possession of the proper canonical qualifications and freedom from irregularities or other impediments.

(a) Ecclesiastical as also natural and divine positive law demand in a candidate for Orders certain qualifications specified in detail further on. His Ordinary alone has authority to decide whether he possesses them in the degree possibly required by special circumstances of place and time.

(b) Under the name of irregularities or impediments the Church singles out certain physical or moral defects which she pronounces incompatible with the clerical office. Their presence before ordination would render the latter unlaw-

ful; should they arise later on, even without any one's personal fault, the exercise of the powers already received would become prohibited.

2°. Necessity or utility of the diocese. (*a*) The priesthood partaking of the nature of a public office, no individual person has a right to it without a call from God and from those to whom He has committed the government of His Church. In each diocese it belongs to the Bishop, as its divinely appointed ruler, to provide the Christian community with sacred ministers who may attend to all their spiritual needs.

At the same time, because the undue multiplication of clerics exposes them, as experience has shown in the past, to the dangers of idleness with all its evil results, the Council of Trent (Sess. XXII, de Ref. c. 16) and several Pontiffs after it (Benedict XIII, *In supremo*, Sept. 23, 1724; Pius X, *Pieni l'animo*, July 28, 1906) have cautioned local Ordinaries, as the Code does also, not to confer Holy Orders upon more subjects than they can usefully employ. This will permit them, besides, to eliminate some less desirable subjects. (Gasparri, 577.)

Under the present discipline clerics are ordained for the diocese and not necessarily attached to any particular church at their ordination, as formerly. Bishops, therefore, have to take into account, not so much the needs of any individual church now, as those of the diocese.

This canon directly concerns the secular clergy, not Religious, except implicitly and by way of general direction.

(*b*) The legislator here explicitly authorizes Bishops to ordain such of their subjects as they

may possibly or probably not need for their diocese with the intention of eventually transferring them to another by means of excardination and incardination.

They may even, no doubt with the Ordinary's consent, ordain them for the immediate service of the other diocese with which, in this case, they become affiliated by their ordination, as the Commission of Interpretation has declared. (Aug. 17, 1919; *Monitore*, Feb. 1920.)

283. 3. *Exclusion from Orders "ex informata conscientia."* (Can. 970.) 1°. Ancient decretal law empowered Religious Superiors to refuse ordination to subjects known to them as unfit even though simply because of some secret fault; but it did not allow local Ordinaries to prevent the promotion of unworthy clerics as long as the unworthiness remained occult, how certain soever it might be otherwise. (4, 5, X, I, 11.)

This left Bishops without canonical means of closing the doors of the sanctuary against undesirable and at times dangerous aspirants, whose disorders they could not prove juridically.

In order to enable them to correct abuses to which this condition gave occasion, the Council of Trent decided, after long deliberation and some hesitation, to extend the provision regarding the ordinations of regulars to those of seculars and authorize Bishops to forbid them even for secret faults and without formal trial. (Sess. XIV, de Ref., c. 1.)

2°. The Code maintains this legislation and enacts that the proper Bishop or major Religious Superior may, for any canonical cause, even though occult, and without any formalities, for-

bid promotion of his clerics to Orders, the candidate retaining the right of recourse to the Holy See or to the Superior General in case of a Religious debarred from ordination by his Provincial.

(a) Any Ordinary who can give Orders or grant dimissorial letters can also refuse them in this informal manner.

(b) He must have a canonical cause for his action, that is, one recognized by law as sufficient: lack in the candidate of one of the qualifications required (Can. 974), the existence of some secret irregularity, the fact that the diocese does not need his services, would fulfill this condition.

(c) This cause must be certain, although not necessarily capable of juridical proof; in case of recourse it would have to be made known to the Holy See or higher superior, but not to the person concerned.

(d) The Ordinary may pronounce this exclusion without any special formalities, orally or in writing.

284. 4. *Freedom of Clerical Vocation.* (Can. 971.) The Church severely condemns interference with the freedom of clerical as well as of Religious vocation.

1°. She pronounces it criminal, under whatever pretext and by whatever means, to force any person into the ecclesiastical state against his own will. Violation of this law, which applies to all—masters, parents, superiors, as well as others—entails excommunication. (Can. 2352.)

Advice, suggestions, and exhortations, provided they keep within reasonable bounds and do not degenerate into moral compulsion or undue pres-

sure, do not curtail liberty, but rather increase it by enlightening the mind and strengthening the will, thus enabling a person to make a decision with more perfect knowledge and greater independence from passion or other illegitimate influences. (Gasparri, 633-639.)

2°. It is also sinful to prevent one otherwise well qualified and likely to prove a useful worker from embracing the clerical state, and even simply, without valid reason, to turn a person away from the priesthood by counsel or otherwise, thus depriving the Church of the services of one willing and able to labor fruitfully for God and for souls.

285. 5. *Previous Seminary Training.* (Can. 972.) 1°. The priesthood requires a special and long preparation, which should regularly begin at a very early age.

(a) The age of youth, says the Council of Trent, unless it be rightly trained, is prone to follow after the pleasures of the world; and, unless it be formed from its tender years unto piety and religion, before habits of vice have taken possession of the whole man, it never will perfectly and without the greatest and well-nigh special help of Almighty God persevere in ecclesiastical discipline. Hence the Holy Synod commanded that provision be made in every diocese, if circumstances at all permitted, for this special training of the young aspirants to the priesthood in institutions organized for the purpose and called seminaries, into which would be received boys at least twelve years old, born in lawful wedlock and showing signs of an ecclesiastical vocation. (Sess. XXIII, c. 18.)

Many Popes, and particular Councils have renewed these prescriptions in modern times and insisted on the importance of that particular preparation of future clerics from their tender years in distinct institutions. (Pius IX, *Nostis*, Dec. 8, 1849; *Singulari*, March 17, 1856; Leo XIII, *Etsi Nos*, Feb. 15, 1882; *Benevolentia caritas*, ad Episcopos Hibernia, Aug. 1, 1882.) Pope Pius XI considers this early training in preparatory seminaries as the more necessary at present, since many parents now give less attention to the Christian education of their children, and the young, exposed on all sides to corrupting influences, lack the solid religious formation which alone can bring the soul into subjection to the commands of the divine law and even to the precepts of natural honesty. (March 19, 1924; A. A. S., Ap. 1, 1924; Periodica, 1 Maii, 1924, p. 7.)

(b) In order to secure the thoroughly ecclesiastical training of candidates for the priesthood, the Council of Trent did not allow into seminaries students not intended for the clerical state. Popes, particularly Leo XIII and Pius X, in recent years have urged Bishops to follow the same rule and not let their preparatory seminaries become mixed colleges. (Leo XIII *Quæ mare sinico*, Sept 25, 1902; Letter to the Bishops of Bavaria, Dec. 22, 1887; to the Bishops of Italy, Dec. 8, 1902; to the Bishops of Brazil, Sept. 18, 1899; Pius X, *Motu Proprio*, May 12, 1905; July 28, 1906.) The present Pontiff has laid great stress on this point of discipline. He wants all seminaries to preserve their strictly ecclesiastical

character in regard to piety, studies, and discipline, not receiving any secular students, as their presence proves very detrimental to the others. Departure from these principles, he thinks, accounts for the loss of many vocations. (Aug. 1, 1922, A. A. S. 1922, p. 449; Canoniste, Nov. 1922, p. 527.)

(c) The Council of Trent wished to separate future clerics from the distractions and corruptions of the world, hence it ruled that seminaries would maintain or board them, *alere*. Such was also the mind of St. Charles Borromeo, the most faithful interpreter of the conciliar decrees. (Institutions ad universum Seminarii regimen pertinentes.) Leo XIII and Pius X imposed the same régime on a number of preparatory seminaries in Italy, Spain, Brazil.

In the report which they must send every three years to the Congregation of Seminaries and Universities, Bishops have to state whether in their seminaries they have any day scholars, and if so for what reason and whether they could not soon receive them as boarders.

In canonical language seminary includes junior or preparatory as well as senior or theological seminary. (Bargilliat, De Institutione Clericorum, Art. i-iv; Recrutement Sacerdotal, Juin 1910, p. 184; Juillet 1922; Janvier 1923, p. 3.)

286. 2°. (a) The Code urges likewise the training of aspirants to Sacred Orders in seminaries from their tender years. Without imposing it as a strict obligation, the Church very clearly desires that they should make even their classical course in such institutions; she positively com-

mands it at least for the course of theology. During the four years which it must last, clerics ought to live in a seminary organized according to canonical rule and follow the prescribed courses in the seminary itself or in some other Catholic school. Ecclesiastics may at times find it necessary to attend non-Catholic schools or state universities, but to do so they must have the explicit permission of their Ordinary.

In a letter addressed through the Congregation of Bishops and Regulars to the Bishops of Italy (July 21, 1896), Leo XIII directed them to grant such permissions sparingly, only for really grave reasons, to well-chosen subjects who have already completed their philosophical and theological courses. Pius X confirmed these instructions and extended them to the whole Catholic world in the Encyclical *Pascendi* (Sept. 7, 1907) and the *Motu Proprio Sacrorum Antistitum* (Sept. 1, 1910.) Benedict XV, after discussing the matter with the members of the Consistorial Congregation, maintained the enactments of his predecessors, but reserved the permission to clerics already promoted to the priesthood. (Ap. 30, 1918; A. A. S., 1918, p. 237; Canoniste, Mai, 1918, p. 266; Bargilliat, o. c., Art. xix.)

(b) Ordinaries may, in individual cases and for grave reasons, allow an aspirant to Holy Orders, by way of exception, to pursue his theological studies outside a clerical seminary, but they must then commit him to a pious and reliable priest, who will watch over him and train him to piety.

ARTICLE I

SPECIAL REQUISITES OF CANDIDATES FOR ORDERS

(Can. 973-982.)

I. DESIRE OF, AND WELL ASCERTAINED FITNESS FOR, THE PRIESTHOOD.

(Can. 973.)

287. 1. In times past some clerics remained for many years in the lower degrees of the hierarchy or never advanced to the higher Orders. The present organization of the Church supposes all the sacred ministers endowed with priestly powers; hence regularly neither Minor Orders nor even tonsure should be conferred on one who did not intend to go as far as the priesthood and give serious promise of becoming some day worthy of that office.

2. If, however, after receiving tonsure or the lower Orders a cleric refused further promotion the Bishop could not force him to accept it, nor forbid him, for this reason alone, the exercise of the powers he possesses already. Only a canonical impediment or some other cause considered as sufficiently grave by the Ordinary would justify such a measure. (Gasparri, 638.)

3. Seriously probable evidence of a true vocation suffices for a call to tonsure or Minor Orders, but the Church solemnly warns Bishops not to confer Sacred Orders on any one of whose canonical fitness they have not positive proofs giving moral certainty, otherwise they commit a very grievous offence and run the risk of becoming partakers of other men's sins.

II. CONFIRMATION AND BECOMING HABITS OF LIFE. (Can. 974.)

288. 1. Before joining the ranks of the clergy by ordination, one ought to receive the sacrament which makes us perfect Christians, not as a condition for the validity but for the lawfulness of the act and under pain, probably not of grave, but at least of venial, sin.

2. Each Order supposes certain virtues, a certain degree of Christian and ecclesiastical perfection, internal and also external, which the candidate ought to acquire before promotion. None shall be initiated by first tonsure, says the Council of Trent, who have not received the sacrament of confirmation and in whose regard there is not a probable conjecture that they may render unto God a faithful service.

Let Minor Orders be given, it continues, only to such as with increasing age grow in worthiness of life and learning, of which they will give proof especially by the example of their good conduct, by their assiduous service in the Church, their greater reverence for priests and the superior Orders, by more frequent Communion.

Bishops should admit to Sacred Orders only worthy candidates whose commendable life shows the maturity of old age, who have a hope with God's help to live in chastity.

To the Order of priesthood they should promote those who have conducted themselves piously and faithfully in their previous functions, who have proved their ability to teach the people all things necessary for salvation and to administer the sacraments; who are so conspicuous for piety and purity of life that they may shine as examples

of all good works and righteous conduct. (Sess. XXII, de Ref., c. 4. 11-14.)

Present conditions may require other qualifications besides the ones mentioned by the Council. The Code does not enter into any details in this matter, but leaves it to the appreciation of the Ordinary, who will find other directions also in the decrees of various Synods, instructions of the Roman Pontiffs, and the writings of the saints.

III. CANONICAL AGE. (Can. 975.)

289. 1. Ancient writers speak of young lectors, whom they call children, infants, *pueros, infantes, infantulos*. According to their accounts, St. Epiphanius became a lector at the age of eight and St. Euthemius at the age of three (Martène, l. c., viii, art. 3, n. 2; Thomassin, o. c., P. I, l. 2, c. 67-70.) Pope Siricius (384-399) desired that boys destined for the service of the Church should be ordained lectors from their infancy, soon after baptism, before puberty. (Epist. ad Himerium, n. 13; L. P., T. 13, coll. 1142.) Tonsure in the beginning was given at the same time as the Minor Orders. The first regulation concerning it directly forbids giving it to infants. (4, I, 9, in Sexto.)

The same Pope Siricius permitted promotion to subdeaconship at the age of twenty; a little later several Synods allowed it at eighteen and even, in the twelfth or thirteenth century, at fourteen or fifteen. Clement V required again the age of eighteen. (3, I, 6, in Clem.)

For deaconship and the priesthood, Synods from the fourth to the twelfth centuries generally required the age of twenty-five and thirty respec-

tively. (D. LXXVII–LXXVIII.) Exceptions to this rule commenced to be made in the eighth century; they became more numerous in the twelfth, and gradually custom lowered that age to twenty and twenty-five, a change officially sanctioned by Clement V. (l. c.)

The Council of Trent did not modify the ancient legislation regarding the age for tonsure or Minor Orders. It supposed that clerical students received tonsure soon after entering the seminary, which might be at the age of twelve, provided they knew the rudiments of Christian doctrine and could read and write. For Minor Orders they had to understand Latin. (Sess. XXIII, c. 4, 11.) In regard to Sacred Orders, the Council ruled that henceforth no cleric should be promoted to subdeaconship before his twenty-second year, to deaconship before his twenty-third, and to the priesthood before his twenty-fifth; this meant before he had begun the twenty-second, twenty-third or twenty-fifth year. (Gasparri, n. 484–494; Wernz, II, 111; Many, n. 83; Riganti, In Regul. xxiv.)

290. 2. The present law does not directly fix any special age for the reception of tonsure or Minor Orders, but the studies which these ordinations now presuppose imply much greater maturity than the mere use of reason demanded by ancient canons.

For subdeaconship, deaconship, and the priesthood it maintains the law of the Council of Trent with only a slight modification. Instead of the twenty-second, twenty-third or twenty-fifth year begun, it requires the twenty-first, twenty-second and twenty-fourth completed.

The years are reckoned from the day of birth not of baptism (Cong. Conc., Dec. 18, 1627), and from day to day, not from moment to moment. (Can. 34, § 3, 3°; General Legislation, n. 127.) Thus one born May 5, 1900, completed the twenty-first year at the end of the fifth or beginning of the sixth day of May, 1921.

A cleric receiving Sacred Orders before the canonical age would incur *ipso facto* suspension from the Orders received. (Can. 2374.)

The Roman Pontiffs can dispense from this law. Riganti quotes examples of permissions granted for conferring tonsure on children not yet seven. (L. c., § 2, n. 6.) They do not ordinarily dispense for subdeaconship or deaconship, although they have done so in a few exceptional cases. For the priesthood, when the good of the Church demands it, they dispense from twelve or eighteen months, very rarely from more. Bishops also not infrequently obtain faculties to dispense from one year or one year and a half for the priesthood.

IV. COURSE OF STUDIES. (Can. 976.)

291. I. *Former Discipline.* In the Middle Ages, and even under the Tridentine law, aspirants to Holy Orders were given tonsure and the ecclesiastical dress almost from the beginning, thus to mark their separation from the world and facilitate the preparation for their calling. Soon they received some of the Orders and commenced to serve in the church and assist the parish priest. In the seminary, according to the Council of Trent, they learned grammar, singing, ecclesiastical computation, and the other liberal arts; they

studied the Sacred Scriptures, ecclesiastical works, the homilies of the saints, the manner of administering the sacraments, particularly the sacrament of penance, and the forms of the rites and ceremonies. (L. c., c. 18.) Still, the functions of the Minor Orders, even of the diaconate with the exception of preaching, did not of themselves require extensive learning, and many clerics spent long years, if not their whole life, in the lower ranks of the hierarchy. This explains why the Council of Trent demands so little for the first ordinations: for tonsure, knowledge of the rudiments of Christian doctrine and ability to read and write; for Minor Orders, understanding of Latin; for subdeaconship and diaconship, instruction in letters and in what pertains to the Order. (Sess. XIII, c. 4, 11, 13.)

In modern times all the inferior Orders had become chiefly so many steps to the priesthood and served as immediate preparation for it. They supposed, therefore, the same dispositions and qualifications as the priesthood itself, only in different degrees; hence the custom, which had gradually prevailed in many places, of conferring them only when candidates had begun or almost completed their strictly professional training in the theological seminary.

In Italy this had become a law by a decree of Pius X (Jan. 18, 1908), approving the Disciplinary Regulations for Seminaries drawn up by the Congregation of Bishops and Regulars, which allowed the conferring of tonsure during the course of introduction to theology, of the Minor Orders during the first and second year of theology, of

subdeaconship after completion of the third, of deaconship at Easter of the fourth, of the priesthood at the end of the fourth, not before. (Bargilliat, o. c., p. 183.)

The Code has adopted this legislation, with a few modifications, for the whole Church, extending it also to Religious, who under the decree *Auctis admodum* (Nov. 4, 1892) might receive the subdiaconate after one year of theology, the diaconate after two, and the priesthood after three.

292. 2. Present Law. The Code requires for every Order a certain progress in ecclesiastical studies and at least some time of seminary training.

1°. No one, whether secular or Religious, may be promoted to the first tonsure before beginning the course of theology, which the legislator supposes taken in a clerical seminary.

The program of studies for candidates to Orders includes, besides the inferior or classical course, two years of philosophy and four years of theology. (Can. 1364, 1365.) To be considered as a theological student in the sense of this canon one must have completed the course of philosophy as prescribed by law and commenced the course of theology, which includes dogmatic, moral, and pastoral theology, Scripture, Church history, liturgy, canon law, homiletics, and ecclesiastical chant. It would not suffice, for example, to attend some lectures on homiletics or chant, or to study privately some theological treatise during the years regularly devoted to philosophy; but one having completed the philosophical and

followed besides some theological courses in a clerical seminary would fulfil the requirements of the law.

2°. Although not containing any explicit provision on the subject, the Code implicitly places the ordinations to Minor Orders during the first and second years of theology, since they must come after tonsure and precede subdeaconship by at least one year. (Can. 978.)

3°. Subdeaconship may be conferred only towards the end of the third year of theology, for example, about Pentecost, even though school closes several weeks later; deaconship after the beginning of the fourth, and the priesthood after the first half of the fourth, that is, during the second term if the year is divided into two about equal parts.

This anticipation of the ordination to the priesthood does not dispense from completing the year after, so that the theological course may last the full four years, as the law clearly demands and the Congregation for Religious had declared, interpreting a former decree concerning them. (March 24, 1911.) More recently the same Congregation explicitly stated again that all concessions for the anticipation of the priestly ordination, whether they contain that condition or not should be understood, except for an explicit provision to the contrary, as meaning that the young priest will complete his course, and that meanwhile he will not have any other work to do which might interfere with his studies, such as preaching or hearing confessions in a somewhat habitual manner. (Oct. 27, 1923; A. A. S., 1923, p. 549; N. R. T., Jan. 1924, p. 56.)

293. 4°. The theological course qualifying for Orders must be taken in a recognized school of theology, in conformity with the program prescribed for seminaries (Can. 1365), not privately, even under the direction of a special tutor. The Congregation, applying a similar provision for Religious, allowed these to study privately one or two of the accessory branches, but on condition that they would pass the usual examinations and supposing that superiors had serious reasons for permitting this departure from the general rule. (Sept. 7, 1909; Canoniste, Nov. 1909, p. 739.) Some would consider the courses of dogma and moral as primary and all the others as secondary in relation to this regulation. In a letter on the seminaries of Italy the Consistorial Congregation mentioned as accessory, biblical Greek, Hebrew, homiletics, patrology, liturgy, archæology, and Gregorian chant. (July 16, 1912; A. A. S., July 31, 1912, p. 491.)

The Congregation of Religious had ruled likewise under the former discipline that a student who, through no fault of his own, because, for example, of ill health or military obligations, would absent himself from the courses for not more than three months, could make up for this with the help of private lessons, *in privatis scholis*; he also would have to pass the regular examinations. (March 1, 1915; A. A. S., p. 123; Periodica, viii, p. 226.)

5°. A year here means a full school year lasting at least nine months, so that the complete theological course, including the vacation, may extend over a period of forty-five months. Any shortening of this time, even under the pretext

of doing more intense work and multiplying the courses or of doing work during the vacation, is pronounced an abuse and absolutely condemned. (Sept. 7, 1909; May 31, 1910; March 24, 1911.)

6°. The Holy See does at times dispense from these rules and allows superiors to shorten the course of studies of their subjects, but it does so reluctantly and only in cases of grave necessity. It has also refused this dispensation even when a real need seemed to exist, giving as a reason that fewer priests thoroughly trained will accomplish more than more numerous ones imperfectly prepared for their work, and that for the people to remain temporarily without the desired assistance in order to have afterwards the services of a fully-equipped pastor will prove a gain rather than a loss. (Dec. 21, 1909.)

In a letter addressed to Superiors of Religious Orders Pope Pius XI urges them again not to let their subjects neglect any portion of the program of studies nor to reduce the time prescribed for them. He considers as unwise, to say the least, those who, perhaps to meet a passing need, abridge the preparation of their clerics to use them a little sooner. Experience shows, he says, that the defects of a hurried and incomplete training can hardly ever be remedied. Whatever advantages an anticipated ordination may procure must be counter-balanced by the results of lessened efficiency perhaps for a whole life-time. (*Unigenitus*, March 19, 1924; A. A. S., Ap. 1924, p. 133; *Periodica*, 1 Maii, 1924, p. 10.)

This letter and most of the decrees referred to above concern directly Religious, but they reveal the mind of the Church, and the principles

they enunciate have universal value. Many of them preceded the publication of the Code and have not in themselves the force of law any longer even for Religious, but they may serve, with due allowance for the differences between the two legislations, as interpretations of the new law, the more so as the Code has embodied several of their provisions, at least substantially, and applies them to seculars as well as to regulars.

V. RECEPTION OF ORDERS IN PROPER SUCCESSION. (Can, 977.)

294. 1. The Council of Sardica (344, Can. 10) decided at the suggestion of Osius that a wealthy man or jurist called to the episcopate should first be tried in the office of lector, deacon, and priest and gradually rise to the episcopate by showing his fitness for it. (Hefele-Leclercq, o. c., I, p. 791; Van Espen, IV, p. 275.) Pope Siricius gave the same rule to Himerius of Tarragona, but he formulated it in more general terms and demanded that the candidate should serve also for a time as acolyte and subdeacon and in some cases as exorcist. No legal text requires the order of porter before receiving the others, but by custom this had become generally obligatory before the end of the sixth century. Tonsure became in the same manner a necessary preparation for all the other ordinations. Thus were fixed the degrees of the hierarchy and their mutual relation as they exist at present. Promotion to one of them without passing through the inferior ones was condemned as irregular and often punished with suspension or even more severely. (I, X, V, 29; Many, n. 102-106.)

2. Without entering into details, the Code af-

firms the principle of the necessity of going through the various degrees of the hierarchy successively in the order prescribed. It condemns the ordinations *per saltum*, evidently using this term in the traditional sense of omission of one of the Orders. Suspension remains the sanction for violation of this law. (Can. 2374.)

VI. INTERSTICES. (Can. 978.)

295. I. According to the Council of Sardica, candidates for the episcopate had to remain in the lower Orders as lectors, deacons, and priests long enough to have their faith, morals, and character put to a sufficient test as prudence required. (Can. 10.) In his letter to the Bishop of Taragona, Pope Siricius ruled that one joining the ranks of the clergy at an early age should be ordained lector and remain in this office till the age of thirty, he would then serve for a while as an acolyte or subdeacon, and for five years as a deacon; after ten years in the priesthood he might become a Bishop. One entering the ecclesiastical state later in life would have to serve only two years as lector or exorcist before promotion to subdeaconship. Pope Zozimus (417-418) permitted the promotion of lectors to higher Orders at the age of twenty instead of thirty. We find here no mention of tonsure because for a long time it was received with the first Minor Order.

These rules admitted of exceptions. Conditions brought on by war and famine in some provinces of Italy obliged Pope Gelasius (492-496) to reduce the intervals between orders to three months, but only temporarily. In other cases the

extraordinary merits of the subject or the urgent need of the Church justified promotion without the usual delays. St. Ambrose passed from the lay state to the episcopate within a few days.

In decretal law this discipline had lost much of its importance. The Council of Trent, without restoring it in all its original severity, wished to renew its essential provisions. It decreed, therefore, that an entire year should elapse between the priesthood and diaconship; as also between diaconship and subdiaconship, between this Order and the last of Minor Orders, unless for the utility of the Church the Bishop should decide otherwise. Between Minor Orders it commands observing interstices also, without, however, determining any thing as to their duration and leaving it to the prudence of the Bishop to dispense with them if he deemed it expedient. We do not find here any enactment regarding tonsure and the first Minor Order. (Sess. XIII, c. 11, 13, 14.)

The Bishops were given ample faculties to dispense from interstices; hence the custom introduced in some places of conferring the four Minor Orders on the same day or even some of the Minor Orders together with subdiaconship. It remained strictly forbidden, however, to give two Sacred Orders together even to regulars; all indults or privileges to the contrary notwithstanding. (Sess. XIII, c. 13.)

296. 2. The present law asserts again the necessity of observing interstices or proper intervals of time between the different Orders, so that clerics may have an opportunity of exercising the powers received, as the Bishop or his representatives will direct and circumstances will permit.

1°. Between tonsure and the first Minor Order and between the several Minor Orders some time should regularly elapse, but the legislator does not fix any time, leaving this to the prudent judgment of the Bishop.

2°. Between the last Minor Order, the acolytate, and subdeaconship the Code, like the Council of Trent, requires a full year, which may mean a calendar year of 365 or 366 days or a liturgical year; as, for example, from Easter to Easter or from Pentecost to Pentecost; this might in some cases be shorter by several weeks. Ancient canonists generally accepted this interpretation of the Tridentine law and it, no doubt, holds for the present one. (Many, o. c., n. 109.)

3°. Between subdeaconship and deaconship as between deaconship and the priesthood an interval of three months suffices now instead of the full year formerly prescribed. These are three calendar months reckoned from day to day not including, therefore, the day of ordination. (Can. 34.)

4°. These intervals of three months or one year may be shortened if the Bishop deems it necessary or useful for the Church. Canonists generally speak of this intervention of the Bishop as an act of dispensation, although neither the Council of Trent nor the Code designates it by that term. Strictly speaking, it appears rather like an authorized declaration of the partial or total cessation of the law by reason of common necessity or utility. The convenience, needs, or merits of the ordinand are not mentioned in this connection.

The Ordinary who enjoys this power of dispensation in particular cases is the Bishop of the candidate's domicile and in the case of Religious the ordaining Prelate.

The Congregation of Sacraments decided, with the special approval of the Pope (Aug. 15, 1909), that Ordinaries authorized by Indult to ordain *extra tempora* or without observing interstices might use these faculties in favor of strangers who come to them for ordination with dimissorial letters from their own Ordinary. (A. A. S., I, p. 656, 1909; N. R. Th., 1910, p. 47.)

5°. The power here granted to Bishops does not, under any circumstances, include that of conferring Minor Orders with subdeaconship or two Sacred Orders on the same day. This would require a special authorization from the Sovereign Pontiff. All contrary customs, even those which some canonists considered as legitimate (Many, l. c., n. 114), are explicitly reprobated and, therefore, condemned to disappear as corruptions of the law, without possibility of reviving in future, except under very special conditions. (Can. 5.)

Nor may a Bishop, without special permission, confer tonsure together with one of the Minor Orders or all the Minor Orders together; he might confer two or three of them.

This provision differs from the ancient discipline in several respects, particularly in regard to tonsure, but as it does not, like the preceding one, contain the clause reprobating contrary customs, it abrogates the ordinary, not the centenary or immemorial ones, if the Bishop does not judge it prudent to abolish them. (Can. 5.)

VII. CANONICAL TITLE. (Can. 979-982.)

297. I. *Origin of the Discipline.* 1°. Ancient Councils repeatedly insisted on the necessity of assigning to each cleric at his ordination a church or monastery to which he would give his services and from which he might expect in return an honorable maintenance, so that he might not wander about in idleness or have to engage in unbecoming occupations for a living. (Nicæa, 325, Can. 15; Chalcedon, 451, Can. 6; Rome, 853, Can. 39.)

When about the fifth century churches dedicated to saints or mysteries received from these their name or title, they commenced soon to be designated themselves as titles, *sub titulo S. Pudentianæ* or *titulus Pudentianæ*, and clerics ordained for them were thereby *titulati* or ordained for such a title.

2°. In the course of the ninth, tenth, and eleventh centuries the revenues of churches destined for the support of their clergy and till then held in common were divided into distinct, independent portions and one allotted to each ecclesiastic permanently. At his death it did not revert to the common fund, but went to the successor; it constituted his benefice or prebend and normal means of support. The name of title passed to it and thus arose the title of benefice.

3°. Henceforth each cleric, at least those in Major Orders, had to receive before ordination a benefice sufficient for his decent support. Some Bishops, however, having failed to comply with this condition, the Lateran Council (1179, Can. 5) decreed that those who would ordain a deacon

or priest without title would have to support him unless he had sufficient personal patrimony. From these words some concluded that patrimony could serve as substitute for title. Although this was not the meaning of the Council, Innocent III not long after (1208) allowed a Bishop to ordain clerics without benefice if they had sufficient resources of their own (23, X, III, 5), and gradually patrimony became a regular title for ordination.

This opened the door to some abuses. Clerics thus ordained, without any connection with any church, chapel, or monastery and possessed of independent means, would wander about and live in idleness. In the Council of Trent some Bishops, in order to remedy the disorders to which this often led, proposed to abolish the title of patrimony altogether and return to the strict discipline of Chalcedon. The Synod did not adopt so radical a measure, but it decreed that Bishops should not admit the title of patrimony or pension except when the necessity or utility of their diocese warranted it and on the condition that clerics thus ordained would be attached to the service of a church. (Sess. XXI, de Ref., c. 2; Sess. XXIII, c. 16; Pallavicini, *Histoire du Concile de Trente*, L. xvii, c. 9, n. 6.)

4°. In modern times, the Holy See granted to missionary or other countries that had no benefices, Indults authorizing ordinations for the service of the mission, church, or diocese, *titulo missionis, diæcesis, ecclesiæ, administrationis*. Ecclesiastics ordained on this title promised their labors to the mission or diocese, which in return guaranteed their support.

5°. For regulars, as by their perpetual profession they acquired a right for life to proper sustenance from the Order, perpetual religious profession constituted a sufficient title for ordination.

298. 2. *Present Law.* 1°. Necessity of Canonical Title. (Can. 974, 7°.) The decrees of the early Councils do not distinguish between Major and Minor Orders and seem to require a title for them all, but a more restricted application of their enactments gradually prevailed after the introduction of the beneficial system. In the thirteenth century, according to the Glossa (In c. 2, X, III, 5), the Roman Church did not oblige Bishops to give benefices to clerics on whom they conferred only Minor Orders. The Council of Trent confirmed this interpretation of the law and the Code likewise demands a title only for Major Orders.

299. 2°. Regular Titles. (Can. 979.) They are now as under the Tridentine law: for the secular clergy benefice, and in its absence, patrimony or pension.

(a) Benefice still retains the preference of law as a title for ordination. That a cleric may use such a title he must have actual, undisputed, and permanent possession of a benefice sufficient for his proper support.

Parishes in the United States do not serve for this purpose, although they constitute at present real benefices, because deacons and subdeacons can not hold parochial offices and also because the fixity of tenure required for ordination titles would interfere with the administration of the diocese.

A cleric may resign the benefice of his ordination, but for this he must in the act of resignation make known that character of the benefice and prove that he has other means of support, which with the approval of his Ordinary he substitutes for the benefice. (Many, n. 136-137.)

(b) Like the Council of Trent, in the absence of benefice the present law accepts patrimony and pension as canonical titles for ordination, provided they be secure, actually possessed, not merely promised or hoped for, not depending on the good will of friends, and sufficient for the support of the ordinand.

To alienate his canonical patrimony or pension a cleric should obtain the permission of his Ordinary and have other means of support.

The legislator leaves it to the Ordinary to determine according to circumstances what income from benefice, patrimony, or pension should be considered as sufficient for the honorable maintenance of a clergyman. (Many, 138-142.)

300. 3°. Loss or Omission of Canonical Title. (Can. 980.) (a) If an ecclesiastic in Sacred Orders lost his ordination title, for example, his benefice, patrimony, or pension, he would have to secure another unless in the judgment of the Bishop sufficient provision had been made otherwise for him.

(b) Ordinaries who without Apostolic Indult would knowingly promote to Sacred Orders one of their subjects, or permit his promotion, without canonical title, would incur a suspension for a year from the conferring of Orders (Can. 2373), and they would remain under obligation, as also would their successors, of supplying the

needy cleric with the necessities of life till some arrangement would be made to secure for him proper and permanent maintenance.

(c) If a Bishop, against the prescriptions of law, had ordained a cleric without canonical title, with the understanding that the ordinand would not ask for any sustenance, the agreement would be null and void. (Blat, l. c., p. 412.)

301. 4°. **Subsidiary Titles:** Mission and Service of Diocese. (Can. 981.) Common law now recognizes these titles and permits the use of them without special Indult, but only on certain conditions when none of the regular ones is available.

(a) **Mission.** Authorization to ordain sacred ministers without the usual canonical titles and hence with the title of mission was granted to the English College in Rome (Gregory XIII, Ap. 23, 1578), then extended to the German-Hungarian, the Scotch, the Irish and all the colleges under the jurisdiction of Propaganda (Urban VIII, *Ad Uberes*, May 18, 1638), and afterwards to missionary countries generally, even though they possessed a regularly organized hierarchy. As long as they remained under the authority of the Congregation of Propaganda the Bishops of the United States and Canada, for example, received an Indult allowing them to ordain their subjects under the title of mission.

The students of the colleges that enjoyed this privilege had to promise under oath to give their services to the mission, not to enter any Religious Order, and not to leave the mission without the permission of the Holy See.

After the extension of this privilege to various

countries, all who took advantage of it had to make the same promises.

According to the present law, Bishops or Vicars Apostolic in countries still under the authority of Propaganda no longer need an Indult to ordain their subjects with the title of mission; these must bind themselves by oath to remain permanently in the service of the mission under the direction of its Ordinary.

This oath must, no doubt, be understood now in the same sense as under the former discipline and the title may likewise be lost as before, or replaced by another with permission from the Holy See. (Instruction, *De Titulo Ordinationis*, Ap. 27, 1871; Coll. Prop., n. 1179; III Balt. Con., p. 202; Gasparri, n. 554; Many, n. 145; Konings-Putzer, *Commentarium in Facultates Apostolicas*, n. 211; Nilles, *Commentarium in Con. Plen. Balt. III*, p. 202; E. R., Nov. 1895, p. 354.)

302. (*b*) Service of Diocese. This title, which corresponds substantially to the one commonly used in the ancient Church, had become an exceptional one with the introduction of benefices, but it has regained importance in modern times.

(i) In 1592 Sixtus V granted faculties to the Patriarch of Venice to promote to Minor and Major Orders clerics who had no title of benefice, patrimony, or pension; provided, with the consent of the rector, they would be attached to a church for which they would labor and which would provide for their support out of the offerings of the faithful. (A. S. S., xiii, p. 574.)

In the dioceses of Mexico the custom has

existed from time immemorial of ordaining under the title called "of administration," which consists essentially in the right that clerics obtain to proper support from the contributions of the people in return for the services they accept to render wherever the Bishop wishes to employ them. The Congregation of the Council, after careful discussion, declared this custom legitimate. (June 21, 1879; A. S. S., xiii, p. 569.) The Bishops of Latin America, in the Plenary Council held at Rome in 1899, considered the same title of administration or service of the Church as sufficient in all the dioceses under their jurisdiction. (N. 582.)

After the loss of ecclesiastical benefices in the eighteenth and nineteenth centuries, it became the practice in France and other parts of Europe, with the tacit consent of the Holy See, to ordain subdeacons and priests with no other title than the guarantee of support out of church revenues explicitly or implicitly given them by the Bishop to whose diocese they pledged their services. (Many, n. 146.)

At the Vatican Council it was proposed officially to sanction this practice and explicitly authorize Bishops to use the title of service of the church or diocese whenever conditions demanded it. Circumstances did not permit the Fathers to take action on this, but in recent years Rome has often granted dispensations to promote clerics to Sacred Orders without title which, as a Bishop must always provide for his priests, implied the title of service of the diocese or something equivalent.

When by the Constitution *Sapienti Consilio*

(June 29, 1908) countries like Ireland, Canada, and the United States ceased to depend on the Propaganda, the Consistorial Congregation substituted the title of service of the Church for that of mission, which they generally used before. (For U. S. Jan. 2, 1909; for Ireland, May 27, 1909.) It made the same change for the students of the American, Canadian, Irish, Scotch, and other colleges at Rome and elsewhere which passed from the jurisdiction of the Propaganda to that of the Consistorial Congregation.

This Congregation decided at the same time that these students would continue to take the oath prescribed for them by Urban VIII, only in a modified form, which included, however, the promise not to enter a Religious Order without permission from the Holy See; but it stated that clerics in the United States ordained under the title of service of the Church would not have, except in cases where the common law might require it, to bind themselves by oath to the diocese, as they used to do when ordained under the title of mission. (Nov. 12, 1908; July 29, 1909; A. A. S., Sept. 15, 1909, p. 678; Canoniste Contemporain, Nov. 1909, p. 720.)

303. (ii) The Code has extended to the whole Church the concession made before in favor of America and other countries except that it uses the term *servitii diæcesis* instead of *servitii ecclesiæ*, as under the present law clerics are ordained for the diocese, not necessarily for a particular church or parish.

An Ordinary who has ordained clerics under this title must make provisions for their support. Usually he will keep subdeacons and deacons in

the seminary; as to priests, he must give them a benefice or office or else some assistance sufficient for their proper maintenance, unless they would have forfeited their right.

These ecclesiastics on their side must promise under oath to devote themselves permanently to the service of the diocese. From the declaration of the Consistorial Congregation referred to above (ad xiv) some concluded that the obligation of taking this oath existed only for one ordained under the title of mission, not for one ordained under that of service, but the text of the canon under consideration does not make any such distinction and clearly affirms the obligation for both. It does not follow from this, however, as others would infer, that both have to take the same kind of oath. All the Code demands here is the promise of permanent service in the diocese, which does not of itself contain a prohibition of entering a Religious Order or passing to another diocese without permission from the Holy See. Nor do any previous decrees require, as perhaps for the missionary oath, such an extensive interpretation, and since it notably restricts the right of Ordinaries to excommunicate their subjects and that of ecclesiastics to embrace a more perfect life, it should not be admitted without convincing reason. (Vermeersch, l. c., n. 250; Nilles, l. c., p. 210.)

304. 5°. Titles for Religious. (Can. 982.) Ecclesiastical legislation previous to the Council of Trent and the Council itself have little or nothing on canonical titles for the ordination of Religious. When canonists required such a title

for those who received Sacred Orders they easily found it in solemn perpetual religious profession which, by the bond of union it establishes between the Religious and his Order, and the right it gives him to proper maintenance for life, constitutes fully sufficient guarantee of stability and support. Only solemn profession, however, was admitted as of such canonical value. But in modern times many Congregations had obtained the privilege of ordaining their subjects under the title of simple religious profession or an equivalent one.

(a) For regulars, then, the canonical title remains that of solemn religious profession or, as it is called, of poverty, although properly speaking they do not directly depend on poverty for their support.

(b) For Religious of simple vows it is the title of simple profession, called also title of common board or congregation or by some other name. This implies that at present Congregations with simple vows can, without Indult and without any other title, ordain their members who have made their perpetual profession. Temporary vows would not suffice.

(c) All other Religious follow in this regard the same rules as seculars. This applies to novices, to members of Orders or Congregations who have taken only temporary vows, to members of societies which have common life but no vows. Some of these have Indults allowing them to ordain their subjects in the same manner as Religious Congregation strictly so called.

ARTICLE II

IRREGULARITIES AND OTHER IMPEDIMENTS

(Can. 983-991.)

(Gasparri, n. 155-614; Wernz, II, n. 95; Thomassin, P. II, L. I, c. 56-91; Dictionnaire de Théologie Catholique, Irregularités; Vermeersch, n. 251; Blat, p. 418.)

305. 1. *Nature.* We may call irregular in a broad sense any ordination involving violation of rule or law, whether divine or ecclesiastical; and irregularities or impediments those violations of law or any obstacles to the valid or lawful reception of Holy Orders.

Canonists and the Code here use these terms in the special, technical sense of personal defects or faults which by canonical law render illicit the reception of Orders or the exercise of their powers.

External circumstances, for example, of time or place, although they would render an ordination unlawful, do not constitute irregularities in this sense, nor do inabilities, unfitness, unworthiness, which by divine law exclude one from the priesthood. Irregularities pertain to the lawful, not valid reception of Orders. A cleric who has incurred one of them may not receive Orders or exercise the powers of those he has received, but he does not lose his office nor the use of his power of jurisdiction.

Irregularities do not necessarily suppose moral guilt and they are not in themselves punishments either vindictive or medicinal, although some of them may contain a penal element. Their pri-

mary purpose is to safeguard the honor of the priesthood, secure respect for the sacred ministers, and dignity in religious functions.

2. *Divisions.* 1°. The present law officially sanctions the distinction made by canonists between temporary and permanent impediments; it reserves for the latter the name of irregularities and designates the former as simple impediments.

2°. It retains also for the sake of greater clearness the division suggested by Innocent III and commonly accepted since of irregularities *ex defectu*, arising from a defect without moral character, and irregularities *ex delicto*, which suppose a personal offence and guilt and partake of the nature of penalty, although in a secondary manner.

306. 3. *Origin and Development of the Discipline.* 1°. Men have generally demanded of their priests freedom from certain faults or defects which they considered particularly unbecoming in ministers of religion. Under the ancient law the Book of Leviticus (xxi, xxii) enumerates those which excluded from the functions of the Aaronitic priesthood. Under the New Dispensation, as soon as the Apostles commenced the work of Church organization, they laid down rules for election to the Christian ministry (I Tim., iii, 2; v, 22; Tit. i, 6) and pointed out faults which should exclude from it.

After them Popes and Councils added their own enactments, as circumstances and general or local needs called for them. We find lists of such irregularities or impediments in the Apostolic Canons compiled about the middle of the fourth century but representing a much more an-

cient discipline, in the Council of Nicæa (325, Can. 1, 2, 9), in the decretals of Innocent I (412-417) and Gelasius (492-496), in the Council of Toledo (633, Can. 19) and others. (Dictionnaire, l. c., p. 2539.) The term irregularity in its present sense occurs in St. Augustine (Epist. 60) and Rufinus and then in the legal texts particularly after Innocent III. (10, X, I, 9; 33, X, II, 20; Canoniste Contemporain, June 1911, p. 331.) The legislation itself reached its full development in the Decretals during the period extending from Alexander II (1159-1181) to Gregory IX (1227-1281). The Council of Trent itself and subsequent Popes had practically no addition to make to it.

2°. The Decretals, however, speak only of individual irregularities as the occasion offers, chiefly in the first and fifth books; they do not treat of them *ex professo* and have no special title devoted to them. Hence a great difficulty in distinguishing them from suspensions, various penalties, or prohibitions.

Moreover, whilst decretal law had reserved to the Pope the right of enacting irregularities, in previous centuries particular Synods and local customs had introduced several, and it remained probable that general custom might still have the same effect. (Wernz, 97.) This contributed also to the uncertainty and confusion.

The Code has simplified matters very much by drawing up a list of irregularities which it declares exhaustive. No others, whether founded formerly on written or customary law, remain in force than the ones contained explicitly and with sufficient clearness in that list. (Can. 983.) It

agrees substantially with those commonly given by canonists, but it differs also from them in several important respects.

307. 4. *Irregularities* "*ex Defectu.*" (Can. 984.) 1°. Illegitimate birth, whether public or occult, unless legitimized by the subsequent marriage of parents, papal rescript, or solemn religious profession.

Councils of the tenth and eleventh centuries declared illegitimacy an irregularity (Bourges, 1031, Can. 8; Poitiers, 1078), partly as a check to increasing moral disorders among clergy and laity and in order to prevent clerics or influential laymen from forcing their natural sons into the ecclesiastical state and benefices, partly under pressure of public opinion and under the influence of civil laws, which dealt very severely with illegitimate persons and pronounced against them several disabilities, exclusion from the right of inheriting, testifying in court, etc.

The Church considers as legitimate all persons born of, or conceived in, a valid marriage or even a putative one, that is, one invalid in itself but contracted with the required formalities and in good faith at least by one of the parties. Thus a marriage contracted by a Catholic with a heretic or infidel without the formalities prescribed by the Church, but in the manner commonly accepted among heretics or infidels in the place as valid, would be treated as a putative marriage and children born of it as legitimate. (Wernz, IV, n. 29.)

The subsequent marriage of the parents, whether real or putative, whether newly contracted or revalidated, even only ratified, legiti-

mizes the offspring on condition that they would have been able to contract marriage at the time of the conception, the pregnancy, or the birth. (Can. 1114-1117.)

Legitimation opens the door to Holy Orders and ecclesiastical dignities, but not to the episcopate or cardinalate. (Can. 1117, 232, § 2; § 1.)

Even when occult, illegitimacy debars from Orders the one who knows of its existence with moral certainty; mere doubt would not suffice; foundlings are presumed legitimate except for a proof to the contrary.

308. 2°. Bodily weakness or deformity. (Gasparri, n. 249; Wernz, n. 110.) (a) By Levitical law, "whosoever hath a blemish shall not offer bread to his God. Neither shall he approach to minister to Him: If he be blind, if he be lame, if he have a little, or a great, or a crooked nose, if his foot or his hand be broken, if he be crook-backed, or blear-eyed, or have a pearl in his eye, or a continual scab, or a dry scurf in his body, or a rupture." (xxi, 17-20.)

Likewise in the Christian Church, at least since the fifth century and probably before, bodily infirmities excluded from the service of the altar. (Gelasius, 494; c. 1, D. 55.) Successive Popes and Councils, as cases presented themselves, pointed out those which produced that effect. By the time of Gregory IX legislation on this point had become fairly complete. Henceforth there remained little more to do than make particular applications of the principles implied in the ancient decrees.

(b) The present law lays down the same gen-

eral rules, only with greater clearness and precision, but without entering into details as to their application.

(i) It declares irregular those who can not perform the functions at the altar safely because of weakness or becomingly on account of some deformity. But it requires a more serious defect to deprive one of the use of powers already received than to prevent their acquisition by ordination. Likewise, an irregularity incurred after ordination disqualifies a cleric for those functions only which he has become unable to perform safely or decently, whilst the same defect existing before ordination would have prevented his promotion to any Orders without distinction.

(ii) This involves no substantial change in the former legislation and, therefore, we may use the teaching of ancient canonists and decisions of Congregations for the interpretation of the present discipline, making allowance, however, for differences of times and places, and remembering that particular decrees strictly apply only to the cases under consideration.

Some defects clearly constitute irregularities, but about others there may often exist a doubt; especially in regard to those which go under the name of deformities and pertain to dignity or decency in sacred functions much depends on circumstances. The same external fault has greater importance with some people than with others in different places; they are overlooked more easily in one person than in another. We may also have now more effective means of hiding deformities or artificially remedying bodily weaknesses.

309. (iii) Total blindness evidently renders a

person irregular, nor does the Church grant dispensations for ordination in such cases, although Benedict XV made one exception to this apparently till then absolute rule, but priests losing their eyesight may obtain permission to say Mass, provided they can do so safely and becomingly. They usually receive authorization to say every day the votive Mass of the Blessed Virgin or a Requiem Mass.

Loss of one eye, provided the other one remains normal, does not prevent the becoming celebration of the Holy Sacrifice, even though it should be the left or so-called canonical eye; this infirmity, therefore, does not entail any irregularity. (Gasparri, n. 258; Vermeersch, n. 256.)

In some cases of deafness the Congregation has granted dispensation for ordination; in others it has refused when the applicant would have been unable to hear the server at Mass.

(iv) The Holy See does not ordinarily dispense before ordination from the irregularity incurred by the loss of one arm or hand, nor does it do so after ordination if it is the right hand that has been amputated; but it grants the dispensation after ordination to one having lost the left hand or arm, provided the applicant can perform all necessary ceremonies properly.

In 1918, however, the Congregation of the Sacraments, after obtaining from the Holy Office assurance of the validity of an ordination with the consecration of only one hand, authorized a Bishop to promote to the priesthood one of his clerics who had lost the right hand and wrist; an artificial hand enabled him to handle without

difficulty the chalice, ciborium, and ostensorium. His personal qualities and the great needs of his diocese were further reasons for the concession of this extraordinary favor, apparently the first one of its kind. (July 1, 1918; A. A. S., xiii, p. 436.) The same year the Consistorial Congregation gave to all Ordinaries faculties to dispense their priests from irregularities *ex defectu corporis* incurred in the armies, provided the master of ceremonies could testify to their ability to perform all the important rites of the Mass without assistance and with proper decorum. (Oct. 25, 1918; A. A. S., p. 481.) On a previous occasion it had directed Bishops to apply in each particular case for the dispensations which ecclesiastics in Sacred Orders might need, declaring it inexpedient to seek the same favor for those in lower Orders. (Ap. 3, 1916; A. A. S., viii, p. 153.)

The loss of two fingers and half of the hand, or of the thumb and index finger, or of either of them, or of part of them, constitutes irregularities from which Congregations have in some cases refused to dispense. At present artificial fingers can often remedy the defect. (Gasparri, n. 264.)

310. 3°. Epilepsy, insanity, diabolic possession. The present law explicitly pronounces irregular any person who suffered from one of these afflictions at any time, even, therefore, if apparently cured at present.

The nature of the disorder must have been ascertained beyond possibility of reasonable doubt: stomach trouble, at times, may produce effects

similar to those of epilepsy and mental fatigue may have the appearance of insanity, although essentially different from it.

According to some authors, if attacks of epilepsy had occurred only before puberty and then ceased for a long time the irregularity would no longer exist. The Code, however, does not have that distinction. It only allows Ordinaries when the symptoms of these disorders appeared after ordination and then the patient seemed cured, to permit him the exercise of the powers already received.

Before ordination the Holy See alone can grant dispensation, and it does so occasionally, when freedom from attacks for one or two years or more, in the estimation of a competent and conscientious physician, gives sufficient evidence of permanent cure, which modern science does not readily admit. (O'Malley and Walsh, *Essays in Pastoral Medicine*, xviii, xxii; Gasparri, n. 277-283; Wernz, 116.)

311. 4°. Bigamy. This irregularity dates from the time of St. Paul. (I Tim., iii, 2, 12; Tit. i, 5, 6.) Only those incur it at present who contract successively two or more valid marriages. The Code explicitly requires valid, not necessarily consummated (Blat, p. 429) or ratified marriages (c. 13, D. 34), that is, marriages contracted after baptism. Ancient canonists generally demanded consummation. (Gasparri, n. 379.)

Equivalent bigamy or marriage with a widow no longer entails irregularity.

5°. Infamy of law. Ecclesiastical law pronounces the penalty of infamy or juridical loss of reputation against certain offences (Penal Legisla-

tion, n. 161); from this loss, which may be *latæ* or *ferendæ sententiæ*, results the irregularity of infamy.

Infamy of fact excludes also from Holy Orders but as a simple impediment.

6°. Participation in capital punishment. This irregularity affects: (a) the judge who pronounces a real death sentence, not the jury men, who have to decide only on the guilt, nor the public prosecutor, who asks for the penalty, nor the witnesses who testify against the criminal. (b) The executioners and their immediate and voluntary helpers in the execution of the sentence, not those who coöperate only remotely or do so only by compulsion.

There is no mention here of the irregularity *ex defectu lenitatis*, formerly attached to participation in even a just war. (Periodica, 1, Nov. 1920, p. 129.)

312. 5. *Irregularities "ex Delicto," Arising from Crime.* (Can. 985.) 1°. Apostasy from the faith, heresy, schism. As these irregularities suppose a sin good faith excuses from them, but frequently prudence will demand that a convert obtain a dispensation, at least *ad cautelam*.

2°. Reception of baptism from a non-Catholic. Those who, outside the case of extreme necessity, allow themselves to be baptized, with whatever rite or ceremony, by a non-Catholic become irregular.

The baptism must be consented to, which implies the age of reason, although not necessarily puberty, with knowledge and freedom.

The rite used does not matter as long as the minister is a non-Catholic. This term includes

any member of a heretical or schismatical sect; does it include also infidels? Some canonists answer in the affirmative, and this seems more probable (Blat, p. 432); others answer in the negative (Vermeersch, n. 257) and oppose non-Catholic only to Catholic, not to Christian.

The Code does not mention and, therefore, it abrogates the ancient irregularity arising from repetition of baptism.

3°. Attempt at adulterous or sacrilegious marriage. This irregularity strikes those who dare attempt marriage or contract civil marriage whilst bound by marital ties or by Sacred Orders or by Religious vows even though only simple and temporary; it strikes likewise men who, free themselves, attempt or contract civil marriage with a woman validly married or bound by religious vows. Mere concubinage does not come under this law, nor the violation of vows other than those mentioned here.

313. 4°. Voluntary homicide and abortion. To produce an irregularity the destruction of human life or ejection of a non-viable human fetus out of the womb of the mother must actually and directly result from a gravely imputable action.

The law speaks here simply of human, without distinction between animate or inanimate, fetus, or between conception and animation.

All coöperators, whether physical or moral, incur the irregularity. This does not include the merely negative ones, who do not really coöperate.

By application of these principles all who in a war or a capital trial would positively and efficaciously coöperate in the unjust and gravely cul-

pable destruction of human life would become irregular.

5. Mutilation of self or others and attempted suicide. Mutilation as commonly understood here by canonists implies amputation, not mere deformation, of a part of the body having a specific and distinct function, *v. g.* of a hand, foot, etc., not of one finger, the nose, the ears, because the loss of these does not take away the usefulness of the hand or the sense of hearing or smell. Castration if complete and more probably vasectomy constitute grave mutilations.

To involve irregularity mutilation and attempted suicide must be imputable and seriously sinful.

6°. Unlawful and fatal exercise of medicine or surgery by clerics. If, disobeying the law of the Church which forbids them to practice medicine without Apostolic Indult (Can. 139, § 2), clerics cause the death of a person, even though without fault of their own, they incur an irregularity. They must be guilty of grave sin for unlawfully exercising medicine or surgery, not necessarily in the treatment of the particular case. Death must result from their action, not, for example, from the neglect of the doctor who would take up the case after them.

314. 7°. Unlawful exercise of the powers of Major Orders. Irregularity is incurred by those who exercise functions reserved to clerics in Major Orders although they have not received these Orders or after receiving them have been forbidden to exercise them by canonical penalty either personal, medicinal, vindictive, or local.

(a) The law refers here to the exercise of the

powers of Major, not to those of Minor Orders, and to the solemn exercise with the insignia of the Order. Thus authors commonly admit that an acolyte, for example, would not incur an irregularity by simply removing the pall from the chalice, nor by acting as a subdeacon at high Mass if he did not wear the maniple, or even if he did wear it provided he would not pour the water in the chalice at the offertory nor purify the chalice. A subdeacon would not incur it by singing the gospel if he did not wear the stole.

The rule would now certainly apply to laymen as well as to lower clerics usurping functions reserved to those in Major Orders.

(*b*) Irregularity is incurred not only by those who exercise functions of Sacred Orders which they have not received, but also by those who have received them but whom an ecclesiastical penalty deprives of the right of exercising them, whether a personal or individual penalty, a medicinal one such as excommunication, a vindictive penalty like suspension for a definite period of time, a local penalty such as local interdict or cessation of divine services in a certain place. The former law did not mention vindictive but only medicinal penalties or censures in this connection.

Violation of a prohibition without canonical penal character would not entail irregularity, *v. g.* celebration of Mass by a Religious dismissed from his Order and not yet accepted by a Bishop.

In all cases this irregularity, being *ex delicto*, supposes knowledge and sin.

315. 6. *Simple Impediments.* (Can. 987.) They exist for the following persons:

1°. The sons of non-Catholics as long as their parents remain in their error.

(a) The impediment exists also when only one of the parents, whether the father or mother, is or remains a non-Catholic, and in the case of mixed marriages even if contracted with the proper dispensation, as explicitly declared by the Commission of Interpretation. (Oct. 16, 1919; A. A. S., xi, p. 478.)

(b) Formerly the impediment extended to the second degree in the paternal and only to the first in the maternal line. Now it does not go beyond the first degree in either line, as implied in the text and officially declared. (July 14, 1922, ad ix.)

(c) With the conversion of the parents the impediment ceases and also probably with their death, as they no longer really remain in their error. Under the ancient law the impediment continued if the parents died in heresy (15, V, 2, in Sexto; H. O. Dec. 14, 1890); but according to some canonists the present text naturally admits of the more lenient interpretation, which in odious matters should have the preference, particularly here, as for simple impediments the Code seems to take into account chiefly the present condition of candidates. Moreover, the main reason for the law does not exist after the parents' death, whether it be the wish to punish their sin or fear lest their children should imitate their example, or the opprobrium attached to descent from non-Catholics. (Vermeersch, n. 259; N. R. Th., Mars 1920, p. 186; cf. Gasparri, n. 463, 466, 671; Wernz, n. 139, note 375.)

(d) Under the former discipline this impedi-

ment affected only the sons of heretics, not those of schismatics as such or of infidels. (Clement VIII, Oct. 6, 1593; S. C. C., Feb. 13, 1683; Gasparri, 474.) The Code uses here the term "non-Catholic" instead of "heretic," thus extending the scope of the law and including schismatics as it does in other matters. (Can. 2314, § 1.) Some canonists interpret it as thereby including likewise the sons of infidels (Blat, l. c., p. 446), but others refuse to admit without stronger evidence such an aggravation of the law in odious matters. In other places when the Code designates infidels by the term non-Catholics it adds some other qualificative. (Can. 1099, 2°; Vermeersch, n. 257, 259; N. R. Th., l. c., p. 186, Canoniste Contemporain, Juillet 1922, p. 297.)

(*e*) Ancient canonists did not consider as irregular sons born before their parents' fall into heresy; some required affiliation of the parents with a heretical sect or their personal condemnation. (Gasparri, n. 466, 471; Wernz, l. c.) The same principles may apply under the present law.

316. 2°. Men who have a wife. In the Latin Church they become free to enter the ecclesiastical state only by the wife's death, the dissolution of the marriage if merely ratified, or the official declaration of its nullity. Under the present law, as long as the marriage bond lasts the impediment remains. The Holy See may dispense from it; ordinarily it does so on condition that the wife consents and that she takes the vow of chastity in a Religious Order or in the world, if sufficiently advanced in age. (Wernz, 127.)

3°. Men engaged in an office or administra-

tion forbidden to clerics and of which they have to give an account. They may not be ordained till, having abandoned the office and administration and rendered their account, they become free from their civil obligations.

This rule applies to offices and administrations forbidden to clerics and calling for accounts, not to others. They may be private or public; the Church does not wish to have ecclesiastics entangled in secular business which absorbs too much of their attention and may involve them in difficulties liable to throw discredit on the whole clerical body. (Gasparri, 550; Wernz, 125.)

4°. Slaves properly so called. From the beginning the Church made it a rule not to ordain them till they had been granted their freedom, because of the incompatibility of the state of servitude with the prerogatives and duties of the clerical vocation. (Wernz, n. 124; Thomassin, o. c., P. II, l. i, c. 73, 74.)

317. 5°. Men bound by the civil law to common military service. Regularly they may not receive any Orders, particularly Sacred Orders, till they have served their regular time or been dispensed and discharged unconditionally.

Common, called also active, military service does not include the military exercises prescribed from time to time for a short period of a few days or the extraordinary service which may be demanded in special emergencies, *v. g.* in the event of a war. (Wernz, n. 126; Cong. Inqui., Sept. 16, 1875; Cong. RR., Nov. 27, 1892; Jan. 1, 1911; A. A. S., iii, p. 37; Com. Int., June 3, 1918; A. A. S., p. 344.) Nor does exclusively ambu-

lance work come under the name of common military service.

6°. Neophytes. St. Paul forbids the ordination of neophytes, lest being puffed up with pride they fall into the judgment of the devil. (I Tim. iii, 6.) Councils of the early Church frequently renew this prohibition. (Wernz, 118; Thomas-sin, P. II, l. i, c. 85, 86, 87.)

The Code leaves it to the Bishop's prudence to pronounce on the fitness of converts for ordination, their firmness in the faith and constancy in virtue.

7°. Persons canonically infamous *de facto*. A person may become canonically infamous by a disposition of the ecclesiastical law which pronounces him such because of a certain crime; this is infamy of law, which constitutes an irregularity *ex defectu*. Or he may become infamous by his evil deeds, which cause the public to form an unfavorable opinion of him (Can. 2293); this is infamy of fact, of which we treat here.

As an ecclesiastic must "have a good testimony of them that are without" (I Tim., iii, 7) the Church refuses Holy Orders to those who, on account of some crime or wicked general conduct, have lost the esteem of prudent and right-minded people, till they have recovered it. In this case the exclusion from the clerical state is not perpetual, but lasts only as long as the fact itself on which it is based. Here again the Code leaves to the Ordinary the judgment on the reality of the loss and recovery of reputation and the consequent existence or removal of the impediment to Orders.

318. 7. *Conditions for Incurring Irregularities or*

Impediments. (Can. 986, 988.) 1°. The laws concerning them affect only possible candidates for Holy Orders, that is, baptized persons of the male sex. Defects or facts which form the basis of irregularities may, however, exist or take place before baptism and become irregularities or impediments after, as, for example, bodily defects or a twofold valid marriage contracted in infidelity; for, as Pope Innocent I said in deciding the controversy between St. Jerome and St. Augustine on this point, baptism purifies from sin, but it does not reduce the number of previous marriages. (C. 13, D. 34.) Bigamy remains after it, not as a sin but as defect, and hence for a Christian as an irregularity.

2°. Irregularities *ex delicto* suppose a formal sin, grave, external, and committed after baptism.

(a) Whatever excuses from grave sin excuses also from those irregularities, *v. g.* ignorance, fear, age. Ancient canonists commonly demanded the age of puberty as a condition for incurring them. Their theory does not, however, find any support in the present law, which thus assimilates even irregularities *ex delicto*, not to penalties, but rather to inabilities, although they may partake secondarily of the nature of punishments.

(b) The offence must be external, as Church law does not concern directly purely internal acts; but it does not have to be public. Thus a man can give deliberate, internal assent to heretical doctrines and sin gravely before God without offending against the Church and incurring an irregularity, but he will incur it if he manifests his

heretical tenets even though in presence of only one witness or without any witnesses at all.

(c) Sins committed before baptism are washed away by the sacrament and, therefore, can not produce an irregularity in the new Christian. The irregularity incurred by receiving baptism from a non-Catholic forms no real exception to this rule; it arises from a sin committed, not before baptism, but in the reception itself of the sacrament.

319. 3°. Ignorance of irregularities or impediments does not excuse from them, not even from irregularities *ex delicto*, as explicitly stated in the law against the teaching of many ancient canonists, who assimilated them in this respect also to penalties.

This refers to ignorance of the irregularity itself resulting from the violation of a law, not to ignorance of the law. Thus if a cleric usurps the functions of a higher Order, knowing that he violates a law of the Church in a serious matter but not knowing that such violation entails irregularity, he incurs it all the same. But he does not if he does not know the law. His ignorance in this case excuses him from sin and as a consequence from the irregularity, which presupposes a grave offence. Ignorance may, therefore, excuse thus indirectly from irregularities *ex delicto*, but from irregularities *ex defectu* and from simple impediments it excuses neither directly nor indirectly.

4°. Irregularities and impediments do not bind in cases of doubt either of right or of fact. They should be interpreted strictly, as they imply restriction of rights and impose a burden; nor should

they be extended beyond the prescriptions of the present written law.

320. 8. *Multiplication of Irregularities or Impediments.* (Can. 989.) The legislator provides that they will increase in number with the multiplication of their juridically distinct causes, not with the mere repetition of the same, or they will increase in the same subject in proportion to the specific, not to the numerical, multiplication of their causes.

Their distinct or specifically different juridical causes are the various defects, crimes, or impediments enumerated in the canons as constituting distinct obstacles to the reception of Orders; *v. g.* illegitimacy, infamy, heresy are distinct causes and give rise to specifically different irregularities, also homicide and the causing of abortion, although the latter includes the former whenever it means the destruction of a human fetus possessing rational life, which, according to some, does not necessarily occur in each case. Deafness and blindness are different physical causes, but juridically they amount to only one, *viz.* bodily infirmity.

If a man is illegitimate, canonically infamous, and married three times, we find in him several distinct causes of irregularities and hence several irregularities; but if he has mutilated himself several times or fallen into heresy repeatedly, we have here only the repetition, or placing several times, of the same cause of irregularity, and hence only one irregularity.

By way of exception the repetition of voluntary homicide (the law does not mention here abortion) multiplies the irregularity, so that, no doubt

because of the heinousness of the crime, by special legal provision, a man would become irregular as often as he would commit it.

321. 9. Dispensation from Irregularities and Impediments. (Can. 990-991.) Simple impediments may cease by removal of their cause or by dispensation; the conversion of heretical parents, for example, frees the son from the impediment which prevented his ordination.

Irregularities are of their nature perpetual; ordinarily they require a dispensation unless they cease by abrogation of the law which established them, as occurred by the publication of the Code for several of them.

1°. Power of Dispensing. (a) The Sovereign Pontiff can dispense from all strictly canonical irregularities and impediments. He exercises this power through the S. Penitentiary in cases of the internal forum; in those of the external forum through the Congregation of the Propaganda or of the Oriental Churches, for persons subject to their authority; through the Congregation of Religious in favor of regulars, and that of the Discipline of Sacraments in favor of seculars. The Congregation of the Council still may dispense priests from irregularities *ex delicto*; the Congregation of Rites retains some power in what pertains to ceremonies, *v. g.* the irregularity from bodily infirmity, and the Holy Office may dispense sons of non-Catholic parents because of the connection of this impediment with matters pertaining to faith. (Blat., p. 457.)

322. (b) Local Ordinaries (Can. 990), by concession of law, may, personally or through delegates, dispense their subjects from all irregulari-

ties arising from an occult crime, that is, one not known or known only to a few persons, two or three or perhaps six in a large town, and not likely to become known. (Can. 2197.)

The Code excepts from this grant irregularities arising from voluntary homicide or abortion and those which, although occult, have been brought before the ecclesiastical or probably the civil court for a formal trial, not simply in view of some rather administrative measures or penal sanctions. (Can. 2168-2194.) A case is considered as brought before the court when the judge has officially summoned the parties or they have appeared before him of their own accord. (Can. 1725.)

Bishops have no ordinary power to dispense from simple impediments, nor from irregularities arising from defect or from public crime, but they may receive further faculties by special Indult or at times by general decree. Thus the Consistorial Congregation (Oct. 25, 1918; March 28, 1919) authorized them to dispense their priests on their return from the armies after the war, at least *ad cautelam*, from the possible irregularity *ex defectu lenitatis* they might fear they had incurred and from any other impediment resulting from the fact that they would have volunteered for active service at the front. (Vermeersch, n. 261.)

323. (c) Ordinaries in Religious Orders or higher superiors in exempt clerical institutes enjoy by common law, in favor of their subjects, the same powers as local Ordinaries, but frequently by special privileges obtained, either directly or by communication, they may dispense

them from all irregularities without exception, at least in the internal forum.

(d) All confessors, that is, priests approved for confessions, can dispense in the internal, not necessarily, penitential, forum all who come to them and whom they could absolve from their sins, in the same cases and on the same conditions as Ordinaries if there is urgency and the Ordinary can not be reached without grave inconvenience or serious danger of infamy. They dispense only for the exercise of orders already received.

One does not have to use the telegraph or telephone if he can not reach the Ordinary by letter or messenger or see him personally. The inconvenience mentioned here may be of a temporal or spiritual nature, such as the loss of an important contribution, of an opportunity of gaining a special plenary indulgence, the severe criticisms of the people if a pastor did not say Mass on a certain day, etc.

There is no recourse to the Ordinary or to the Holy See prescribed after a dispensation thus granted because of urgency.

According to some canonists, in those urgent cases a confessor might still, by virtue of the decree of the H. O., Sept. 6, 1909, dispense also from the irregularity arising from voluntary homicide or abortion, but then he would more probably have to refer to the Holy See within a month (Vermeersch, n. 261; N. R. Th., Dec. 1909, p. 728, 747). In the same urgent cases a person unable to reach even an ordinary confessor might probably use *epikeia* to free himself;

this would require great moderation and prudence. (Blat., p. 457.)

These dispensations granted by confessors enable one only to exercise Orders already received, not to ascend to higher ones.

324. 2°. Petition for, Effect and Registration of, Dispensations. (Can. 991.) (a) The petition for dispensations must mention all existing irregularities and impediments; otherwise, although the rescript would have effect for those omitted in good faith, except the ones arising from homicide or abortion or a crime brought before the court, it would remain without effect as regards the ones concealed in bad faith.

In the case of irregularities arising from voluntary homicide the number of the crimes committed must be given under pain of nullity of the dispensation.

(b) A person who has obtained a general dispensation from irregularities may receive Major as well as Minor Orders and non-consistorial benefices (Can. 1411, 1°), even those with care of souls, but for promotion to the Cardinalate, Episcopate, an Abbacy, or Prelacy Nullius, and the office of higher superior in an exempt clerical Order, he would need another, more special dispensation.

(c) A dispensation granted in the internal forum, but outside of the tribunal of penance, should be put down in writing and a record of it kept in the secret archives of the diocese, for reference in case of possible controversies.

CHAPTER III

PREREQUISITES OF ORDINATION

(Can. 992-1001.)

325. 1. *Application to the Bishop.* 1°. Before the institution of seminaries, aspirants to the secular priesthood prepared for it under the direction of the parish clergy or in various schools, and when the time for ordinations approached the pastor or school master brought them to the Archdeacon, who examined them and if he found them qualified presented them to the Bishop for ordination.

The Council of Trent, renewing a provision of a Synod of the ninth, perhaps of the seventh century (Nantes, 658?, Can. 11; 5, D. 24), decrees that when the Bishop has arranged to hold an ordination all who seek promotion to the sacred ministry should be summoned to the city for the Wednesday before the ordination, so that with the help of priests prudent and well skilled in divine and ecclesiastical law, the Bishop may investigate their parentage, person, age, education, morals, learning, and faith. Candidates for Sacred Orders had to appear before the Bishop a month before the ordination. (Sess. xxiii, de Ref., cap. 5, 7.)

2°. The organization of clerical seminaries has in modern times facilitated these investigations, and the present law simply demands here that all, whether secular or Religious, who wish to receive Holy Orders should, at an opportune time before

the ordination, manifest their intention either personally or through others to the Bishop, who makes or authorizes the ordination, or to his representative in this matter, *v. g.*, the vicar General or the Chancellor of the diocese.

326. 2. *Testimonials.* (Can. 993-995.) 1°. Secular Candidates. They must produce the following documents: (*a*) The official certificates of their ordination or if they are to receive tonsure, their certificate of baptism and of confirmation. Regularly these should be duly authenticated extracts from the parochial registers, but in the absence of these the testimony of reliable witnesses will suffice. (Can. 779, 800.) In some places for confirmation the word of the candidate, if he remembers the event, is accepted as proof.

After tonsure the certificate of ordination contains implicitly the required evidence for baptism and confirmation.

(*b*) A certificate of studies showing that the candidate has complied with the prescriptions of law. (Can. 976.) The Code does not exact the detailed account of the courses followed which the Congregation, explaining the decree *Auctis admodum*, demanded of Religious in the Declaration of Sept. 7, 1909. (A. A. S., I, p. 709; Canoniste Contemporain, Nov. 1909, p. 739.)

(*c*) A certificate of good character and behavior from the rector of the seminary or the pastor who had the candidate under his care, in accordance with the prescriptions of Canon 972.

(*d*) Testimonial letters from local Ordinaries. These letters have an official character and may be issued by all local Ordinaries, including besides the Bishop, his Vicar General even without special

mandate, the Vicar Capitular, Vicars and Prefects Apostolic, Abbots and Prelates Nullius, but not by pastors or superiors of institutions or of Religious Orders except with a special delegation from the local Ordinary. (Many, o. c., n. 125.)

In them the Ordinary must positively testify to the candidate's freedom from canonical impediments whilst within his territory, not necessarily to his otherwise good character and conduct as demanded in the letters required for the incardination of a stranger by Can. 117 and formerly by the Bull *Speculatores*. (Many, n. 124.)

Under the former discipline the ordinand in some cases needed testimonial letters from the Bishop of origin or benefice as well as domicile; at present he needs them only from the Ordinary of places in which he remained long enough to contract a canonical irregularity or impediment, and the Code, sanctioning the teaching of many canonists, defines this to be, for soldiers three, and for other people six, months after puberty, that is, after completing the fourteenth year.

Impediments may be contracted also before puberty and in a shorter time than three or six months, but this occurs rarely and the law deals with usual happenings; in view, however, of the possible exceptional ones it leaves the Bishop responsible for the ordination free to demand letters also for a briefer stay, even before the age of fourteen.

It may happen, in the present conditions of society more frequently than before, that the Ordinaries of places in which candidates spent more than six or three months do not know them well enough, either directly or indirectly, to give them

the needed testimonial letters; or candidates may have lived in so many different places that they find it impossible or very difficult to secure letters from all the Ordinaries. Their Bishop may in such cases obtain the needed information from some other sources, or he may take the sworn testimony of the candidate himself as sufficient evidence of his own freedom. The Code now authorizes this mode of procedure without recourse to the Holy See.

If between the issuing of the letters and the ordination another period of three or six months elapses, giving time to contract an impediment, new letters are necessary.

327. 2°. Members of a Religious Order or community which has no authority either by common law or special privilege to ordain its own subjects (Can. 964) must conform in this matter to the rules laid down for the ordination of seculars and furnish the same testimonials. They must present besides letters from the Superior of their Order or community.

3°. Candidates belonging to exempt Orders need for their ordination dimissorial letters from their Superior, who must certify that they have made their Religious profession and belong to the house under his jurisdiction; and, moreover, that they have completed the required course of studies and fulfill all the conditions required by law for ordination. He does not have to enter into all details as long as he guarantees their freedom from impediments and canonical fitness; but for this he has to obtain the proper information regarding their legitimacy, baptism, conduct, etc.

With these letters the Bishop may proceed to the ordination without having to make further investigations, leaving the whole responsibility to the superior who issued them.

These rules hold also in the case of members of Religious Orders which, although not exempt, enjoy the privilege of ordaining their own subjects.

328. 3. *Examinations before Ordination.* (Can. 996, 997.) 1°. Like the Council of Trent, the Code prescribes them for all candidates, whether secular or regular (Sess. XXIII, c. 7, 12; de Ref.), and it calls for a serious, thorough investigation of the subjects' mental equipment, not for mere formalities.

2°. For all, these examinations must bear on the Order they prepare to receive, its nature, matter, and form, the powers it confers, the obligations it imposes, as set forth by theologians and the Roman Pontifical.

Those about to receive Sacred Orders should undergo, besides, examinations on other treatises of theology as determined by the Bishop, who also appoints the examiners and fixes the mode, method, and form of these tests.

3°. The Bishop competent to examine both seculars and regulars is the local Ordinary who has by law the right to make or authorize the ordination, that is, for seculars, their proper Ordinary (Can. 956, 957), for regulars, the Bishop in whose diocese is located the house to which the ordinands belong, even if they had an Indult allowing them to receive Holy Orders from any Bishop.

The Ordinary entrusted by the legislator with

the ordinands' examinations may for a just cause pass the burden and responsibility to the ordaining Prelate, if the latter consents to accept them, not against his will.

4°. A Bishop ordaining either seculars or regulars not his subjects with dimissorial letters certifying that they have satisfactorily passed the prescribed examinations may, if he wishes, accept that attestation, but he does not have to do so; he may, if he chooses, examine them again. In any case, if in conscience he believed the candidate unfit he should not promote him.

329. 4. *Publication of Ordination and Attending Inquiries* (Can. 998-1000). 1°. In the early Church, Bishops, following the example of the Apostles (I Tim., iii, 7), would present those whom they intended to ordain deacons or priests to the assembly of the faithful for their approval. The people signified assent by the words *dignus est*, he is worthy, or similar ones, or they might raise objections, in which case the candidate had an opportunity of disproving the charges possibly brought against him and the Bishop decided. (Hallier, o. c., P. I, s. i, c. 2, art. iv, § 3.) Even to the present day in the ordination of deacons and priests the officiating Prelate invites and urges those among the assistants who might have something against the candidates to rise and speak. But for several centuries this has been little more than a formality serving as a reminder of the ancient discipline and also of a real, actual duty binding on all to prevent the ordination of one whom they would consider unworthy.

The public intervention of the faithful had soon given occasion to abuses, and the custom gradually

prevailed to interrogate them or receive their denunciations only in private. (Carthage, 397, Can. 23; Gasparri, n. 672.)

Still the Church insisted that sacred ministers must have a good testimony of those who are without, and that, because the people often know many things which ecclesiastical superiors are not aware of, Bishops should not fail to find out their opinion of candidates for Orders. As many had come to neglect this, the Council of Trent decreed that before ordinations they should commission the parish priest or some other reliable person to publish in church the names of those about to receive Major Orders and diligently to inform himself from persons worthy of credit about the birth, age, morals, and life of these ordinands, then to transmit as soon as possible to the Bishop himself the result of the investigation. (Sess. XXIII, c. v.)

330. 2°. The Code, renewing and completing this legislation, prescribes the publication of every ordination to Sacred Orders with a general invitation to the faithful to present their objections if they have any; it requires also a special private investigation by the pastor or other persons.

(a) The publication is obligatory before each one of the Sacred Orders; the rule applies to all except to Religious who have made perpetual vows either solemn or simple.

It should be made in the actual parish of the candidate, not necessarily in the parish of origin as formerly, on a day of obligation, in the church during the parochial Mass or on some other day and at some other hour, when there is a larger gathering of people in the church.

The Ordinary may, however, either dispense from the publication for a just cause or on the contrary demand that it be made in other places besides the present parish of the candidate; he may substitute for it a written announcement posted at the church door and left there for several, that is, at least two, days, one of which would be a holyday of obligation.

Should the candidate fail to receive Orders within six months the publication would have to be repeated, unless the Ordinary would decide otherwise.

From the publication of ordinations follows for the people the grave obligation imposed upon them by the Church, besides the one existing by natural law, of revealing to the Ordinary or parish priest before the ordination impediments to Sacred Orders which might have come to their knowledge. They have not to make inquiries but to reveal what they happen to know.

(b) The Ordinary must also commission the pastor who makes the publication and some other person if deemed advisable, to get all the information possible from reliable persons about the life and conduct of the candidates and to send the report of the investigation and attestation of the publication to the Ordinary.

Whenever he considers it necessary or opportune the Ordinary himself should not neglect to make further, even private, inquiries.

3°. In the United States and several other countries a custom contrary to the Tridentine decree had existed for many years; some canonists considered it as unreasonable (Gasparri, n. 701), but others maintained its legitimacy. (Reiffen-

stuel, L. I, tit. xii, n. 3; Wernz, n. 40; Many, 118.) The Code did not condemn it; on the contrary, it allows Bishops to dispense from the publication of ordinations for any reasonable cause.

The necessity of a thorough investigation before promoting candidates to Sacred Orders remains the same, but their prolonged sojourn in seminaries facilitates the study of their dispositions, moral character, and conduct as well as of their ability and knowledge; the reports obtained from former teachers and testimonial letters from pastors help to acquire the necessary information.

331. 5. *Spiritual Retreat.* (Can. 1001.) 1. Pious clerics at all times have prepared themselves for Holy Orders by special works of piety, but this immediate preparation has taken the form of a spiritual retreat principally since the sixteenth century. In the seventeenth St. Vincent de Paul contributed much to the spread of this practice in France and in other countries. For Rome and then for the whole of Italy the Roman Pontiffs prescribed a retreat for at least ten days before each Major Order. (Alexander VII, *Apostolica Sollicitudo*, Aug. 7, 1662; Innocent XI, Oct. 9, 1682; Feb. 1, 1710.) Many Bishops imitated their example both in the Eastern and Western Churches, so that by particular law or custom it had become the rule almost everywhere to make a spiritual retreat before every ordination. (Wernz, n. 35; Many, n. 155.)

2°. Under the present discipline it is the general law of the Church.

(a) The Code prescribes a retreat of at least three full days before tonsure and the Minor

Orders and one of at least six full days before the Major Orders.

Should a cleric receive several of the Major Orders within the same semester or six months, the Ordinary, that is, the local Ordinary for seculars and the Superior for Religious, might reduce the time of the retreat for the diaconate to five or four but not to less than three full days. For the subdiaconate and the priesthood, even if received within a short space of time, the retreat must always last six days. If, however, the three Major Orders were received by special Indult on three successive days or about, the same retreat of eight or ten days would probably suffice for all.

(*b*) When for whatever reason, after completion of the spiritual exercises, the ordination is put off for over six months the retreat must be repeated; for a shorter delay the Ordinary decides whether it should be repeated or not.

(*c*) Religious must make the retreat in their own house or in another one chosen by their superior; seculars, in the seminary or in some other pious or religious house designated by the Ordinary.

(*d*) The superior of the house of retreat and in the case of Religious their Major Superior must let the Bishop or ordaining Prelate know that the candidates have made the exercises.

CHAPTER IV

RITES AND CEREMONIES OF ORDINATION

(Can. 1002-1005.)

332. 1. *Faithful Observance of Rites.* In the conferring of Orders the minister must strictly conform to the prescriptions of the Roman Pontifical or other liturgical books approved by the Church, without omission or change either in the form or the order of prayers or ceremonies.

Any defect, omission, or change, pertaining certainly or probably, according to the teaching of theologians, to the essence of the rite would have to be repaired either by repeating the whole rite or by supplying the part omitted. Thus the Congregations have commanded that the ordination be repeated in cases in which the delivery of the instruments or touching of the chalice and paten had been omitted in the ordination to the priesthood, or when there was no host on the paten or no wine in the chalice; also in cases of omission of the first or second imposition of hands or of imposition without physical contact; for the omission of the third imposition they prescribe only to supply it, without repeating the whole ordination. (Many, n. 294.)

2. *Ordination Mass.* The Mass of ordination or of episcopal consecration must always be celebrated by the ordaining or consecrating Prelate himself. The Holy See does not allow exceptions to this rule.

333. 3. *Passing from the Greek to the Latin Rite.*

If one, after receiving some Orders in an Oriental rite, obtained permission from the Holy See for promotion to higher Orders in the Latin rite, he must first receive in the Latin the Orders he has not received in the Greek rite.

The Greeks confer before the diaconate, tonsure, the lectorate, and the subdiaconate, but the latter with them includes also the acolytate and ostiariate. Hence, according to the teaching of Benedict XIV (*Etsi pastoralis*, May 26, 1742), if a cleric had received tonsure and the lectorate in the Greek rite, before ascending to higher Orders in the Latin rite he should receive the ostiariate then proceed to the exorcistate and acolytate; but if he had received the subdiaconate in the Greek rite he would have to supply only the ostiariate. The Armenians have the same Minor Orders as the Latins.

4. *Holy Communion in the Mass of Ordination.* All who receive Major Orders must go to Holy Communion at the ordination Mass. Theologians consider this obligation as grave for priests who offer the sacrifice with the Bishop but as probably light for deacons and subdeacons. It does not exist for other ordinands.

CHAPTER V

TIME AND PLACE OF ORDINATION

(Can. 1006-1009.)

334. I. *Time.* (Can. 1006, 1007.) 1°. Episcopal consecration must be conferred during

Mass, on a Sunday or the feast-day of an Apostle.

This does not include holydays actually or formerly of obligation, nor the feasts of St. Barnabas, St. Luke or St. Mark, nor the secondary feasts of the Apostles, like the feast of St. Peter's Chair or of the Conversion of St. Paul, but only the *dies natalitius* or anniversary of their death. (S. R. C., Ap. 4, 1913.)

2°. St. Leo gives this rule of consecrating Bishops as also of conferring Major Orders only on Sunday, which meant Sunday morning or Saturday evening, as derived from ancient tradition and apostolic institution (Epist. ix, ad Dioscorum, 445; 4, 5, D. 75), and he confirms it with his own authority. A few years later Pope Gelasius (494) restricts the conferring of the diaconate and priesthood to five days in the year, the four ember Saturdays or the following Sunday morning and the Saturday before Passion Sunday; custom added Holy Saturday. By custom also it became the practice to have the ordinations not only on Saturday afternoon but even Saturday morning. (Thirteenth century.) The decree of Gelasius did not concern episcopal consecration. (Many, n. 97; Wernz, 65; Gasparri, 45.)

For the three Major Orders those six days have remained to the present time the regular ordination days. The Holy See, however, frequently granted Indults for ordinations *extra tempora*, that is, on Sundays and feast-days of obligation. Now the Code extends the favor to all Bishops and allows them, for any grave reason, to confer Sacred Orders on any Sunday or holy-

day of obligation, which at least probably includes under the present as under the former discipline days formerly of obligation although now suppressed. (Blat, p. 484; S. R. C., Nov. 12, 1831.) Sacred Orders must always be conferred during Mass.

335. 3°. Tonsure may be conferred any day and at any hour and Minor Orders on any Sunday or double feast but only in the morning, although not necessarily during Mass. The present law uses the term "double feast" instead of "feast-day," thereby clearly indicating a change in the discipline.

4°. Custom contrary to these prescriptions on the time of ordination is explicitly reprobated by the legislator and consequently abrogated wherever it may exist and under whatever conditions.

The legislator does not withdraw privileges already granted, but the Congregation of the Council has repeatedly declared that permission to ordain *extra tempora* meant only permission to ordain on Sundays and holydays of obligation, not on any day of the year, as in some places the concession had been interpreted by a custom which has now lost all value. (Gasparri, n. 52:)

These rules apply also when a Bishop of the Latin rite, by Apostolic Indult, ordains a cleric of an Oriental rite and conversely.

5°. They do not apply when an ordination has to be repeated or a rite supplied, either absolutely or conditionally. This now may certainly be done outside of the regular days and in secret.

336. 2. *Place of Ordination.* 1°. A Bishop may not without the permission of the local Ordinary

confer outside his own diocese any Orders which require the use of the pontificals. An exception is made for Cardinals. (Can. 239.)

2°. In the diocese. (a) General ordinations should regularly be held in the cathedral church, publicly, and the canons should be called and assist thereat. Canonists understand by general ordinations those of the six regular days. If these ordinations are held in some other place in the diocese it should be in one of the more important churches and in presence of the local clergy as far as circumstances allow them to attend.

(b) For particular ordinations the Bishop may, if he has a just reason for it, choose other churches or the chapel of the episcopal residence, of the seminary, or of a religious house.

(c) Tonsure and Minor Orders may be conferred also in private oratories, but not Sacred Orders.

CHAPTER VI

RECORDS OF ORDINATIONS AND ORDINATION LETTERS

(Can. 1010, 1011.)

337. 1. *Records.* After ordination the full name of each ordinand and that of the ordaining Prelate, as also the time and place of ordination, ought to be entered into a special book and carefully kept in the local diocesan archives. Clerics ordained with dimissorial letters must bring a cer-

tificate of ordination to their Ordinary that he may enter it in that book.

Moreover, the local Ordinary in the case of seculars and in the case of Religious the major Superior who has given them dimissorial letters, must send notice of the ordination of every subdeacon to the pastor of the church in which the new subdeacon received baptism, for insertion in the baptismal register. This double registration has the same purpose as that of marriage or solemn religious profession and may serve to establish the free or not free state of the party concerned. (Can. 470, § 2.)

All documents pertaining to each ordination should likewise be accurately preserved in the archives.

2. *Ordination Letters.* To each one of the ordinands should be given an authentic certificate of the Order received. If it bears the seal of the diocesan court and the signature of the Ordinary or notary it will have full juridical value.

TITLE VII

THE SACRAMENTALS

(Can. 1144-1153.)

(Noldin, *De Sacramentis*, n. 44-54; Wernz, III, n. 758; Blat, p. 718; Vermeersch, n. 461; Catholic Encyclopedia, *Sacramentals*.)

338. 1. *Nature of Sacramentals.* (Can. 1144.)
1°. Ancient writers often called sacramentals the ceremonies connected with the administration of sacraments, and they designated as sacraments or, after Hughes of St. Victor, as minor sacraments, other rites instituted by the Church for purposes of private devotion.

This naturally led to confusion and misunderstandings. When about the twelfth century the true nature of sacraments had become better understood and more clearly defined, theologians, principally after Alexander of Hales, reserved the name of sacrament to the sensible signs of divine institution and that of sacramental to those of ecclesiastical origin.

2°. The Code defines sacramentals as objects or actions which the Church, in imitation of sacraments, makes use of for the purpose of obtaining by her intercession various favors, chiefly of a spiritual nature.

(a) They consist of objects, such as holy water, blessed candles, Agnus Dei, the paschal candle; or of actions, such as blessings or absolutions, the sign of the cross, sacred unctions, exorcisms.

(b) Like the sacraments, they contain an external element signifying a spiritual one, but they differ from them in many respects, principally in regard to their origin and their efficacy.

(c) Sacramentals, instituted by the Church in virtue of the power received from Christ, derive their special efficacy from her intercession, inasmuch as, implicitly and often explicitly, she implores God's favors upon those who make use of them. As her prayer is always heard, they must have an efficacy in a sense infallible, although they may not produce the effect desired nor benefit those who lack the proper dispositions.

They do not, like the sacraments, work *ex opere operato*, nor on the other hand, like our ordinary good works, merely *ex opere operantis*, in strict proportion to the perfection of dispositions in the subject; they have the added efficacy due to the prayer of the Church.

The use of the sacramentals may excite in the soul pious affections, and the Church's intercession obtains graces of penance which secure forgiveness of sin and an increase of sanctifying grace, although they do not produce these effects immediately and by their own virtue.

(d) Each one of the sacramentals has its special purpose; all must tend ultimately to the sanctification and salvation of the soul, but some may serve also directly and immediately our temporal interests, warding off dangers to our bodies, pre-

serving us from diseases or accidents, etc. The form of blessing or the prayers which accompany their use often indicate their particular efficacy.

339. 2. *Institution, Modification, Abrogation.* Since sacramentals depend for their value on the intercession of the Church, it must follow that the Church alone has power to institute them, add new ones to those existing, authentically interpret them, abolish some of them, or change their conditions.

In the Church this power is now reserved to the Holy See which, for the sake of uniformity and other reasons, does not permit other Ordinaries to make additions or changes in the Ritual.

340. 3. *Minister.* (Can. 1146, 1147.) The legitimate minister of sacramentals is any cleric vested with this power and not forbidden to exercise it by the competent authority.

1°. Ecclesiastical law excludes laymen and women from the administration of sacramentals; canonists do not, therefore, recognize that character in blessings imparted, for example, by Abbesses.

2°. The power of administering them can be communicated independently of any sacramental rite by an act of jurisdiction or administration; it can be withdrawn in the same manner or its exercise forbidden.

3°. Only Bishops or other ecclesiastics who have that power by common law or Papal Indult can perform consecrations, that is, blessings accompanied by unctions with holy oils. Thus they alone can consecrate chalices, patens, altars, bells, churches.

The common law grants this power of consecra-

tion to Cardinals (Can. 239, § 1, n. 20), to Vicars and Prefects Apostolic, as also to Pro-prefects and Pro-vicars, even though not endowed with the episcopal character (Can. 294, § 2; 310, § 2), and to Abbots or Prelates Nullius (Can. 323). Some Abbots or Superiors of Religious orders possess it by special concession or privilege.

4°. Any priest can give all blessings except those reserved to the Roman Pontiff, to Bishops, or to others.

(a) The Pope reserves to himself the blessing of Palliums, of Agnus Dei, of the Golden Rose; to Bishops are reserved, for example, the blessing of holy oils, of relic cases, the dedication of churches; to parish priests the blessing of the baptismal font and the solemn blessing of houses on Holy Saturday, nuptial blessings (Can. 462); to Friars Minor the blessing of Stations of the Cross; to Friars Preachers the blessing of Rosaries; to Carmelites the blessing of Scapulars of Mount Carmel. The Roman Ritual gives the list of blessings reserved to Bishops or Religious and of the ones not reserved. (Title VIII; Appendix.)

Blessing does not of itself imply application of indulgences; this supposes special faculties.

(b) Should a priest without permission impart one of the reserved blessings his act would be illicit but not invalid, unless the Holy See had added to the reservation an invalidating clause.

The permission of the Ordinary frequently required for the use of faculties is not a condition of validity unless expressly stated. (S. C. Indul., June 14, 1901.)

5°. Deacons and lectors can validly and lawfully give only the blessings explicitly allowed them by law.

(a) It is the special prerogative of the deacon to perform the solemn blessing of the paschal candle on Holy Saturday, but he must use for this five grains of incense blessed by a priest.

When in the absence of a priest he administers solemn baptism or distributes Holy Communion, he may perform the exorcisms or give the blessings which pertain to the rite. He does not bless the salt or water for baptism; this is done before by a priest. After administering Holy Viaticum he may give the blessing with the pyx; he may likewise probably give the blessing after the distribution of Holy Communion outside of Mass. When in cases of necessity he performs a funeral he may bless the grave. (S. R. C., Aug. 14, 1858.)

(b) In his ordination the lector receives power to bless bread and new fruit. The exorcist had formerly mission to cast out evil spirits. Under the present discipline they do not ordinarily exercise these functions.

341. 4. *Rites and Ceremonies.* (Can. 1148.)

(a) In the blessing or administration of sacramentals all rites and ceremonies prescribed by the Church should be carefully observed, even though they may not pertain to the validity of the act. Thus the Ritual directs the minister to recite the prayers of the various blessings vested in surplice and stole, standing and with head uncovered.

(b) For all consecrations and blessings the Church prescribes a certain formula, which ex-

presses their special purpose and efficacy and constitutes the essential form of the sacramental. Omission of or substantial change in it would render the act invalid.

By constitutive consecrations or blessings, for example, the consecration of a chalice or the blessing of an Abbot, objects or persons are permanently sanctified or dedicated to divine service. Invocative blessings, for example, the nuptial blessing, the blessing of a ship, do not change the condition of persons or objects, but obtain graces for them or the divine protection.

342. 5. *Subject of Sacramentals.* (1149.) Blessings, although intended primarily for the members of the Church, may be given also to catechumens and even, except for some special reason or prohibition, to non-Catholics in order to obtain for them the light of faith or, together with it, health of the body. Sacramentals do not impart sanctifying grace reserved to the true Christian, but only actual graces preparing for it and needed by all.

Catechumens enjoy in this regard practically the same privileges as the faithful; non-Catholics may benefit by sacramentals, but with some restrictions. The Church permits the blessing of their persons or houses, distribution to them of blessed candles, palms, or ashes, but she excludes them from the nuptial blessing. In all cases anything savoring of superstition or leading to it must be carefully avoided.

After a condemnatory or declaratory sentence persons under excommunication or interdict may not use the sacramentals.

343. 6. *Effect of Consecration or Constitutive*

Blessing. (Can. 1150.) Once an object has received a consecration or constitutive blessing it should be treated with special reverence and as something separated from profane use and dedicated to God. Thus, although not a grave sin nor a sacrilege strictly so called, it would not be proper nor lawful to take holy water as common drink or make blessed candles serve the same purpose as ordinary ones.

344. 7. *Exorcisms.* (Can. 1151-1153.) 1°. *Nature and Kinds.* The prayers and ceremonies approved by the Church and used in her name to drive out or ward off evil spirits from persons, places, or things constitute a special sacramental called exorcism.

(a) The New Testament and ecclesiastical history contain numerous examples of diabolical obsession or possession, of evil spirits permitted to attack man's body from without or assume control of it from within. Our Lord reveals the character of His mission by driving them away and delivering the sufferers, and He promises that His disciples will likewise cast out devils in His name (Mark, xvi, 17), a power which the Church has always claimed and exercised. In their ordination exorcists receive authority to lay hands on energumens whether baptized or only catechumens and to cast out devils from the bodies of the possessed.

(b) Even outside the graver cases of obsession or possession, sin, both original and personal, gives the evil spirit a certain hold on man; hence the practice introduced from the beginning of exorcising catechumens as a preparation for regeneration in baptism.

(c) The Church believes also that fallen angels retain some power, under the control of Divine Providence, to act on the material universe and use material objects for their own wicked ends, so that places and things are liable to diabolical infestations within the limits allowed by God. Over them, therefore, she pronounces exorcisms, beseeching God to restrain this power in order that these objects may not become a danger to men. Thus she often exorcises water, salt, and oil which she uses in turn for personal exorcism or for the blessing or consecration, for example, of churches, altars, and sacred vessels, as well as for private devotion. Holy water consists of exorcised water and salt, and in the prayer for its blessing the Church beseeches the Almighty to endow it with virtue, that it may protect those who use it against the attacks of the devil.

2°. Minister. (a) For the exorcisms of the second or third kind, which occur in the administration of baptism or in the various blessings or consecrations, no special power is needed; the minister duly commissioned to perform those rites may also pronounce the exorcisms that go with them.

(b) To exorcise obsessed or possessed persons the general mission received in ordination does not suffice; one must obtain the special and express permission of the Ordinary.

In the present discipline of the Church Ordinaries should not give such permissions to clerics in Minor Orders but only to priests, and among these they should choose men endowed with piety, prudence, and great integrity of life. Before pro-

ceeding to the exorcism of the patient one must investigate the case carefully and prudently and ascertain the reality of the possession or obsession, so as not to treat as diabolical interventions, *v. g.*, merely natural phenomena of hypnotism or spiritism.

3°. Subjects. The Church permits the use of the power of casting out devils in favor also of catechumens, of non-Catholics, and of excommunicated persons.

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